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## Investigating Factors Which Influence the Practice of Corporate Governance within the Kenyan Corporate Sector

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# **Investigating Factors Which Influence the Practice of Corporate Governance within the Kenyan Corporate Sector**

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**Bachelor of Commerce (Finance)**

**Master of Banking and Finance (Financial Markets)**

**Master of Research (Management and Business)**

**Thesis Submitted for the Degree of Doctor of Philosophy**

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**United Kingdom**

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## **List of Abbreviations**

AGM – Annual General Meeting

BSEC – Bangladesh Securities Exchange Commission

CEO – Chief Executive Officer

CG – Corporate Governance

CMA – Capital Markets Authority

EAPCC – East Africa Portland Cement Company

EGX – Egyptian Stock Exchange

GDP – Gross Domestic Product

GSE – Ghana Stock Exchange

ICPAK - Institute of Certified Public Accountants of Kenya

IMF – International Monetary Fund

IPO – Initial Public Offer

K24 TV – K24 Television

LDCs – Less Developed Countries

MRes – Master of Research Degree

NIS – New Institutional Sociology

NSE – Nairobi Securities Exchange

NSEC – Nigerian Securities Exchange Commission

NTV – Nation Television

OECD – Organisation for Economic Co-operation and Development

PhD – Doctor of Philosophy

SA – South Africa

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## **Dedication**

I dedicate this PhD thesis to my parents – Mr James Kimani (dad) and Mrs Nancy Wanjiku (mom) – for their encouragement and unwavering support in my life’s endeavours. I also wish to recognise the sacrifices they have made in their lives to ensure that their children went on to receive world-class education. To quote their words: “we want you to have the very best in life...better education than we did, and a better life than we have lived.”

Thanks mom and dad!

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## **Abstract**

This thesis examines the compatibility of Kenya's (Anglo-American-originated) CG code with the country's institutional environment. Its inspiration arises from researcher's observation that Kenyan firms continue to experience various CG challenges despite the adoption of an international code of CG practices. The study is further motivated by analysis of existing literature, which identifies three important gaps in literature addressed in this thesis, namely: (a) scanty understanding concerning the applicability of foreign CG codes within LDCs institutional environments, (b) limited literature on CG in the context of Africa, and (c) insufficient qualitative CG research notwithstanding mixed results from quantitative studies. A multi-method approach was utilised in gathering data including: twenty-one interviews with representative CG stakeholders, field observations of six listed firms' AGMs, and archival evidence (annual reports and corporate websites, records of AGM proceedings, official documents and policy publications). The study then employs thematic and content analysis to investigate factors which influence the practice of Kenya's CG code within the corporate sector. This thesis's findings demonstrate that despite the merits of the Anglo-American governance model, the present code of CG practice in Kenya is incompatible with the country's institutional environment. Analysis of data establishes the source of this incompatibility as arising from various ambits including: highly concentrated ownership structure of firms, absence of shareholder activism, powerful traditional norms and culture, outdated corporate statutes and weak regulatory environment, and uncertainties within the country's economy. Contrary to expectations following adoption of Kenya's CG code, this thesis finds that Kenyan firms continue to experience severe CG challenges. These include erosion of shareholder wealth, bankruptcy risk, and conflicts between firms and local communities. This thesis makes at least two contributions to the theory and practice of corporate governance in developing countries, such as Kenya. Firstly, it develops and tests a theoretical framework for examining the practice of CG in Kenya. The framework demonstrates that to understand the way CG codes are practiced in a developing country,

requires awareness of factors which characterised the development of the code(s) along with the country-specific implementation process. Secondly, by providing empirical evidence of the incompatibility of the Anglo-American CG model in Kenya, the study reveals how the actions of CG practitioners are defined by a powerful institutional environment, including traditional customs and culture, notwithstanding the existence of explicit CG regulations developed internationally (e.g. in western countries). This was also found to be the principal cause for variance between the provisions of the CG code and actual practice. Finally, this thesis provides both immediate and long-term suggestions for policy. Immediate policy intervention may include a review of conflicting corporate sector regulations and adequate resourcing of relevant regulatory bodies. Long-term policy consideration should focus on reviewing the current CG code with due regard to the 'ecosystem' of firms to avoid tensions occasioned by the institutional environment; including conflicts with non-shareholding constituencies.

# **Chapter 1 – Introduction**

## **1.0 Introduction**

This chapter provides an introduction for this study. It explains the gaps in literature which incentivised the line of inquiry pursued by the thesis, as well as how it sets out to fill those gaps with a view to enhancing the understanding of corporate governance (hereafter ‘CG’). It further outlines the objectives guiding the author in conducting the research, and explains the organisation of the study. Accordingly, section 1.1 below discusses the motivation for this research and demonstrates how the same emerges from the extant literature critiqued, in detail, in the next chapter. Section 1.2 outlines the objectives and research questions guiding the execution of this study. Section 1.3 explains the organisation of the rest of the chapters within this study. Finally, section 1.4 presents a conclusive summary of this chapter.

## **1.1 Research Motivation**

This study assesses the compatibility of a western-inspired CG code in Kenya, a less developed country. It follows from observation that despite the merits of Anglo-American model of governance (see section 2.1.2 for discussion of Anglo-American CG), serious challenges continue to manifest within Kenya’s corporate sector. Such factors include corporate bankruptcies resulting in the loss of shareholders investments and risks of economic crises, and growing conflicts between firms and local communities. Similarly, an emergent strand of CG literature concentrating on less developed countries (hereafter ‘LDCs’) has revealed that CG practices within these countries are still poor. Whilst surveyed LDCs have adopted international codes of CG practices, chiefly the Anglo-American model of governance, literature suggests that there has not been significant improvement in CG practices within adopter countries (e.g. see Wanyama et al., 2009; Soobaroyen and Mahadeo, 2012; Adegbite, 2015). The challenge with implementing foreign-originated CG codes is that they reflect the contexts where they were formulated, and little about where they are applied (Adegbite and Nakajima, 2012, Siddiqui, 2010, Rashid, 2011). Indeed, Charkham

(1994) cited in Adegbite and Nakajima (2012, p.184), notes that “foreign systems of CG reflect their history, assumptions, and value systems”. This therefore suggests that imported CG codes in use within LDCs, such as Kenya, are potentially ineffective in foreign contexts. In this thesis, the researcher also explains the impetus behind the emergence of Kenya’s CG code before considering how it is implemented. This thesis hypothesises factors which influenced the emergence of Kenya’s CG code to be *externally-based* in form of international codes imported into the country, or *internally-influenced* by domestic occurrences, or a *hybrid* of both. As the discussion in this thesis makes clear, an understanding of factors which influenced the development of CG codes within LDCs, such as Kenya, is important in permitting better appreciation of the way provisions of Kenya’s CG code are implemented. Also, it will be interesting to see how locally-originating drivers of the CG development process impact on long-term implementation of the same CG code. From this perspective, there are three areas of CG research that this thesis addresses.

Firstly, the incompatibility between western CG codes when applied to LDC. Previous research shows that various similarities exist between the CG codes implemented both by developed nations and LDCs (Tsamenyi and Uddin, 2008; Adegbite, 2015). Notwithstanding, research carried out within LDCs contexts – including Ghana, Bangladesh, Nigeria and Mauritius – has revealed considerable discrepancies between the actual CG practices observed in each of those countries and the provisions of their CG codes (Adegbite, 2015, Adegbite et al., 2013, Adegbite and Nakajima, 2012, Rashid, 2011, Soobaroyen and Mahadeo, 2012, Tsamenyi and Uddin, 2008). The authors, whilst explaining the chasm between observed CG practices and CG codes requirements, concur that institutional environments of LDCs are markedly different from those in developed countries, where the codes adopted in the former originate. Such differences, therefore, between the institutional environments of developed countries and LDCs mean that it is potentially impractical to apply a universal CG code across the globe (Okpara, 2011, Siddiqui, 2010, Crittenden and

Crittenden, 2012). Indeed, CG practices within developed countries are also argued to vary from country to country (Aguilera and Jackson, 2003). As this discussion makes clear, western-originated CG codes are likely to be ineffective within LDCs. It further suggests a need to examine fully, the interaction between a country's institutional environment and its CG code's provisions. This can permit researchers to uncover sources of incompatibility, between a CG code and the institutional environment, which can then be possibly addressed to improve CG practices in a country. It further suggests a need to theorise the interaction between a country's institutional environment and its CG code's provisions. The ensuing understanding can enable researchers to uncover the sources of incompatibility between a CG code and the institutional environment, which can be addressed to improve CG practices in a country.

Secondly, consistent with past studies which have analysed how country institutional environments influence the practice of CG (e.g. Adegbite et al., 2013, Adegbite, 2015, Ntim and Soobaroyen, 2013), this thesis adopts an institutional perspective<sup>1</sup> as the leading theory. Proponents of institutional theory argue that its recent usage in researching CG, particularly within LDCs contexts, has uncovered interesting findings which traditional theories of CG such as agency theory are unable to explain (Rashid, 2011; Adegbite, 2012). Accordingly, some of the factors found to cause misfit between CG codes and underlying LDCs institutional environments include: (a) culture and traditions (Adegbite, 2015, Wanyama et al., 2009, Adu-Amoah et al., 2008), (b) state of capital markets development (Crittenden and

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<sup>1</sup> This thesis employs three theories – agency theory, stakeholder theory, and new institutional sociology – in interpreting the data gathered. Notwithstanding, the new institutional sociology which is a variant of institutional theory, serves as the leading theory in this study, as the underlying objective is to investigate the practice of Kenya's (Anglo-American-styled) CG code within the constraints of its institutional environment. A detailed discussion of each of these three theories, including appropriateness of new institutional sociology as the leading theory, is provided in section 2.3 of the next chapter.

Crittenden, 2012, Siddiqui, 2010), and (c) weak regulatory environment (Samaha et al., 2012, Osemeke and Adegbite, 2014). A detailed discussion regarding how these institutional factors constrain the practice of CG within LDCs is provided in section 2.2 of this study. The aforementioned authors' findings reveal two important considerations. Firstly, that there are numerous features within the institutional environments of LDCs with potential to influence CG practices. Secondly, their findings question the notion of a universal code of CG – in this case worldwide application of Anglo-American CG model – considering that different countries have dissimilar institutional environments. Indeed, critics argue that the notion that Anglo-American CG model can be a solution to CG problems globally is erroneous. Their view is based on the understanding that LDCs institutional settings are different from those prevailing within developed countries (Uddin and Choudhury, 2008, Siddiqui, 2010, Wanyama et al., 2009, Okpara, 2011, Rashid, 2011). In this thesis, considering that Kenya's CG code is modelled along the Anglo-American system, the researcher seeks to examine how the code is practiced within the constraints of Kenya's institutional environment. Presently, no study to the best of the researcher's knowledge has attempted to provide an in-depth examination concerning factors which influence the practice of CG within Kenya's corporate sector.

Finally, existing CG scholarship has neglected an important area of the CG scholarship continuum<sup>2</sup>; which is, understanding how various CG codes emerged. It is therefore

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<sup>2</sup> The term *scholarship continuum* is used in this thesis to classify existing CG research as follows: (a) studies investigating development/evolution of CG codes are assumed to be situated to the left side of the continuum, while (b) studies examining the impact of CG mechanisms on firm performance are situated to the right side of the same continuum. Moreover, CG studies located to the left side of the continuum are assumed to utilise a qualitative methodology, while those located to the right side are likely to employ a quantitative approach. Consistent with the literature reviewed in this thesis, CG studies investigating the development of CG codes in various LDCs are found to follow a qualitative approach (e.g. Angaye and Gwilliam, 2009; Siddiqui, 2010;



unsurprising that little is understood about the practical details involved in the development processes of CG codes, except for general claims such as being: (i) reaction to corporate failures (e.g. see Waweru, 2014, Adegbite, 2012, Aguilera and Cuervo-Cazurra, 2009), or (ii) imposition by multilateral organisations (e.g. see Siddiqui, 2010, Soobaroyen and Mahadeo, 2012, Adegbite et al., 2013). This thesis, thus, argues that knowledge regarding the way a CG code emerged, is important in making interpretations concerning how it has been implemented. Accordingly, this research seeks to add to literature on CG in LDCs, an understanding concerning the emergence of a code of CG practices in Kenya. To achieve this, chapter 3 of this thesis provides a background discussion of Kenya. This includes Kenya's socio-economic and political context. A further discussion concerning the background of CG in Kenya is also provided in Chapter 3. The discussion explains the development process of Kenya's CG code including factors and events which led to its emergence, and extent to which it aligns with the country's institutional environment.

In addition to the preceding discussion, the present study offers valuable policy and practical insights concerning the practice of CG within non-western contexts. Literature suggests that LDCs, relative to developed economies, suffer from serious institutional weaknesses including: (a) inefficient markets (Allen, 2005); (b) corruption and bribery, and weak regulatory frameworks (Wanyama et al., 2009); (c) abuse of shareholders' rights, poor disclosure and transparency, and lack of commitment on part of boards of directors (Okpara, 2011). The absence of many of these constraints, or total lack thereof, within developed

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Rashid, 2011; Adegbite and Nakajima, 2012), while studies measuring the impact of CG mechanisms on firm performance adopt a quantitative approach (e.g. Mangena and Taurigana, 2007; Ehikioya, 2009; Mangena et al., 2012; Munisi and Randøy, 2013). This thesis further argues that studies utilising a combination of both qualitative and quantitative methodologies, would be situated between the extreme-left and extreme-right sides of the scholarship continuum. This scholarship continuum may therefore be referred to as methodological continuum of CG research.

countries where LDCs CG codes originate, implies that the quality of CG practices between LDCs and the developed markets is likely to vary (Gibson, 2003, Adu-Amoah et al., 2008). Whilst the researcher does not rule out non-existence of institutional weaknesses within developed countries, it is assumed that their magnitude within LDCs is potent enough to neutralise the effectiveness of western-originated CG codes. As Adegbite and Nakajima (2012) argue, CG standards within LDCs cannot be merely improved by implementing regulatory reforms, unless such changes are adapted to the institutional peculiarities of each country. Such country peculiarities include local culture and traditions, state of capital markets, and level of economic development. Accordingly, and with this understanding, the researcher seeks to explore how Kenya's CG code is implemented within the constraints of Kenya's institutional environment. This objective will also help to determine whether some of the factors influencing CG practice in Kenya could have been circumvented by the time of adopting the CG code.

Overall, this thesis seeks to investigate whether the principles underlying the Anglo-American model of CG (see section 2.1 for a discussion of Anglo-American CG) are relevant in Kenya. Such principles include shareholder primacy, one-tier board system, efficient markets and effective supervisory framework comprising of judicial and regulatory systems (Reed, 2002b). This thesis examines how the Anglo-American CG model functions in Kenya, an LDC, including how domestic firms practice CG. The researcher expects Kenya's institutional environment to be different from that prevailing in the Anglo-American context.

In conclusion, the topic investigated in this thesis involves factors which influence the practice of CG in Kenya whilst, simultaneously assessing applicability of Anglo-American CG in a non-western/non-traditional setting. This topic is important in understanding the effectiveness of foreign-originated CG codes within LDCs, such as Kenya, which have been adopted with intention of encouraging private sector investments to drive economic growth (Tsamenyi and Uddin, 2008). As this preliminary discussion demonstrates, an emerging

strand of literature has put to question the effectiveness of CG with LDCs (Rashid, 2011; Adegbite and Nakajima, 2012; Soobaroyen and Mahadeo, 2012; Adegbite et al., 2013; Adegbite, 2015). Such studies, albeit a tiny minority of existing literature, concur that CG codes in use within LDCs are hardly effective due to powerful local constraints. Their findings also show diverse institutional constraints to be affecting CG in different countries (e.g. poverty, weak laws, political instability, corruption and bribery etc.). It is thus difficult to conclude if this is an exhaustive list all factors which influence CG within LDCs, particularly given the limited work on this topic. As no such study has been previously conducted in Kenya, this study adds to the understanding of how an Anglo-American-styled CG code is implemented within the constraints of another LDC setting; that is, Kenya. In doing so, this thesis develops and tests a theoretical framework for understanding the practice of CG in Kenya. This study further seeks to contribute to a dearth of research on CG in Africa (Waweru, 2014, Adegbite et al., 2013). Finally, the present study adds to another neglected area of literature, that is, CG studies utilising the qualitative methodology. In this regard, it responds to call for authors to contribute to expansion of CG research using qualitative methodology (Filatotchev and Boyd, 2009, Zattoni et al., 2013).

## **1.2 Research Objectives and Questions**

### **1.2.1 Research Objectives**

To address the gaps and weaknesses identified in the literature review discussion (see Chapter 2, sections 2.2.4 and 2.3.4), the following objectives represent the considerations that the researcher addresses in each of the research questions guiding this thesis.

#### **1.2.1.1 General objective**

The general objective of this study is to assess the compatibility of Kenya's (Anglo-American-originated) CG code with the institutional environment of the country. To achieve this objective, the thesis investigates institutional factors which influence the practice of CG

in Kenya and compares them with the assumptions underpinning Anglo-American CG model.

#### **1.2.1.2 Specific objectives**

- a) To investigate factors which influenced the development of the Kenyan CG code. To achieve this objective, the thesis analyses the evolutionary process, including factors and events, which culminated in the present code of CG practices in Kenya. Besides, a comparative analysis between the Kenyan CG code and a representative Anglo-American CG code – UK Combined Code – is performed.
- b) To examine factors which influence the manner in which the Kenyan CG code is implemented. To achieve this objective, the thesis analyses CG practices themed around five pillars identified from the literature review. This includes analysing the provisions of Kenya's CG code, the implementation of code and impact of underlying institutional environment on the observed CG practices.

#### **1.2.2 Research Questions**

To fulfil the objectives outlined above, the following questions have been formulated to guide the execution of this study. Subsection 1.2.2.1 presents the central research question guiding the execution of this thesis, while subsection 1.2.2.2 presents two sub-questions designed to guide the researcher in addressing the central question effectively. A discussion of how these research questions were developed is provided in section 2.4 of the next chapter.

##### **1.2.2.1 Central research question**

What factors influence the practice of corporate governance in Kenya?

##### **1.2.2.2 Research sub-questions**

- i. What factors influenced the development of the Kenyan CG code?
- ii. What factors influence the implementation of Kenya's CG code within the corporate sector?

### **1.3 Outline of the thesis**

This thesis comprises six chapters. The present chapter, chapter one, introduces this study including the rationale informing the conduct of the research, along with the research questions guiding the investigation. Chapter two provides a comprehensive review of relevant literature, from which the gaps and weaknesses addressed in this study are identified. The critique of the literature in chapter two further assists in positioning the present study within existing CG literature. Chapter three explains Kenya's institutional background from three contexts: (a) social, (b) economic, and (c) legal backgrounds. It further analyses the evolutionary process of Kenya's CG code, and explains the present CG landscape in Kenya. Chapter four describes the methodology guiding the conduct of this study, including its philosophical standpoint, along with methods used to collect and analyse data. Chapter four also provides discussion concerning the rationale behind the methodological choices made in this thesis. Chapter five presents the analysis of the data collected for purposes of this research, where the research questions are addressed. Finally, chapter six provides a concluding summary for this thesis.

## **Chapter 2 – Literature review**

### **2.0 Introduction and Purpose of the Chapter**

This chapter develops an argument for this thesis by appraising gaps and weaknesses prevailing within extant literature. This critique of literature, which also helps to position the present study in the context of other writers, is organised into four main sections. The first section (2.1) begins by looking at the understanding of the concept of CG, and explains the commonly accepted definition of CG along with the interpretation of CG from the perspectives of each of the three theories adopted in this study – agency theory, stakeholder theory, and new institutional sociology. In addition, a discussion of the Anglo-American CG model is provided including an explanation of its main characteristics.

The second section (2.2) reviews CG studies in Africa and other LDCs. The discussion in this section is further structured into five subsections – CG themes – which emerged from the critique of literature: (a) legal and regulatory framework, (b) shareholding patterns and ownership rights, (c) board of directors, (d) stakeholder relations with firms, and (e) financial transparency and disclosure. The section closes by highlighting the gaps and weaknesses in the existing research, before discussing their implications for the study's research questions and methodology.

The third section (2.3) discusses the theoretical framework, where three theoretical lenses – agency theory, stakeholder theory and new institutional sociology – are adopted to examine the thesis's research problem. Each theory overcomes some limitations of the others, and provides the researcher with comprehensive understanding of the phenomena under investigation. Ideally, agency theory would be the closest explanation to CG practices in Kenyan firms, because it underpins the shareholder-oriented, Anglo-American CG model implemented in the country. However, agency theory's various shortcomings limit its explanatory power as identified in the discussion provided in section 2.3.1. The stakeholder theory further permits understanding concerning the way firms interact with their various

stakeholders, subsequently impacting on CG decisions and firm CG practices. On the other hand, the new institutional sociology theory (NIS), will help to examine constraints posed by the institutional environment in the implementation of Kenya's CG code. The NIS perspective further avails a unique consideration regarding how Kenya's institutional reality influences the actions of various CG actors. Lastly, jointly and/or individually, these three theories tend to be most frequently used in extant CG literature, with NIS gaining prominence in the recent past.

The fourth section (2.4) discusses how the research questions for this study were developed in order to address the research gap identified from the reviewed literature. In this section, the researcher draws a link between the thesis's research question and the empirical evidence discussed in section 2.2. Finally, the fifth section (2.5) provides a concluding summary of this literature review chapter.

## **2.1 Defining Corporate Governance**

### **2.1.1 Meaning of corporate governance**

As an interdisciplinary subject, CG is defined differently by various authors depending on their scholarly affiliation. In addition, further disparities are evident within individual fields. For instance, within management field, finance and stakeholder management scholars differ in their views concerning the notion of CG (Filatotchev and Boyd, 2009, Aguilera and Jackson, 2010). For this reason, the researcher will begin by providing the commonly accepted definition of CG, followed by understanding of CG from the point of view of each of the theoretical perspectives adopted in this study. Finally, this subsection will conclude with a working definition of CG used in this study.

CG is generally referred to as a "system by which companies are directed and controlled" (Cadbury, 1992, paragraph 2.5). However, from an agency theoretic standpoint (see section 2.3.1), CG refers to structures/mechanisms which underlie the relationship between

providers of funds, largely shareholder capital, and the corporate managers. CG is therefore viewed as a tool for ensuring that managers employ shareholders' funds diligently to generate reasonable returns within a firm's market constraints (Shleifer and Vishny, 1997, La Porta et al., 2000). Alternatively, stakeholder theorists (see section 2.3.2) view CG as a framework for ensuring that firms are mindful of the expectations of their various stakeholders. As such, CG not only defines how firm claimants should be attended to by the management, but also provides a basis for sustaining good stakeholder relations to minimise likelihood of conflicts, both within (*intra*-) and across (*inter*-) stakeholder groups (Claessens, 2006, Filatotchev and Boyd, 2009, Carney et al., 2011). Lastly, CG is viewed, from an NIS perspective (see section 2.3.3), as principles and mechanisms whose effectiveness is both fuelled and constrained by the institutional environment within which CG players reside. Hence, the decisions of firm managers and other CG players' actions are shaped by their cultural understanding about the role of a firm within society (Davis, 2005, Greenwood et al., 2008, p. 389-390).

Nevertheless, despite the varied interpretation about the concept of CG, CG appears to be commonly agreed as a tool for actualising corporate objectives. The three perspectives – (a) agency theory, (b) stakeholder theory, and (c) NIS – however, diverge in their prioritisation of corporate objectives. Accordingly, the working definition of CG adopted in this study is inspired by agency theory, whose notion of corporate objective demonstrates greater consistency with the tenets of Anglo-American governance investigated in this thesis. The researcher believes that Kenyan companies resemble to a greater extent, the corporate structures hypothesised within Anglo-American governance model (see section 2.1.2 below), including one-tier board system, and a market-based financial system (West, 2006).



The preceding discussion in this section attempts to provide explanation of CG from the point of view of existing CG literature. Notwithstanding, the concept of CG in Kenya assumes multiple meanings which potentially conflict. For instance, Kenya's CG code explains its objective as being a means to enhance "*corporate performance, capital formation and maximisation of shareholders value as well as protection of investors' rights*" (Capital Markets Authority of Kenya, 2002, Section 1.1, pp. 472). This statement suggests that the intention of adopting Kenya's CG code was to primarily safeguard concerns of the shareholder constituency, as opposed to various other stakeholders such as employees, suppliers and community. This view of CG is also the perspective assumed by Anglo-American model of governance and agency theory (see sections 2.1.2 and 2.3.1 respectively). On the other hand, and as data analysed in this thesis reveals, various stakeholders of firms such as local communities expect firms operating within their locality to provide them with jobs and basic amenities like water, health care and electricity. Such communities are often economically marginalised, and can disrupt firm operations if they feel neglected (see discussion in section 5.4.2 for analysis of data concerning firm stakeholders within Kenya's CG landscape). In this regard, such stakeholders' notion of a well governed firm would be number of locals absorbed into its labour force, and schools, hospitals, or roads built by a firm. It is also likely that the amount of profits reported by a firm, or dividends paid, would be of subordinate importance to such stakeholders. This explanation, of how CG is potentially regarded by local communities, shows the diversity of meanings attached to the concept of CG in Kenya. As the discussion above makes clear, there is potentially no single definition of CG in Kenya; and possibly other similar LDCs. Lastly, therefore, the researcher will attempt to develop a more standardised definition of CG, from the findings reached at the end of this study, that is reflective of Kenya's institutional reality.

### 2.1.2 The Anglo-American Governance model

The Anglo-American governance model is one of the four distinct CG systems practiced around the world, that is: (a) Anglo-Saxon systems, (b) Germanic systems, (c) Latin systems, and (d) Japanese systems. The four CG systems are further grouped into two broad categories where the Anglo-Saxon system is termed as the *shareholder model*, while the last three CG systems are collectively referred to as the stakeholder model (Weimer and Pape, 1999). Notwithstanding, this research concentrates on the Anglo-American CG model, as it is the one adopted in Kenya – the contextual focus of this research.

The Anglo-American CG model has a heritage of the English common law system, and is organised around the North American model of USA and Canada, together with the commonwealth model of UK (Anglo-Saxon capitalism), Canada and Australia (Weimer and Pape, 1999). Besides, the Anglo-American CG model is largely shareholder-oriented, hence the alternative names the *outsider* or *market-based model* (Aguilera and Jackson, 2003, Aguilera and Jackson, 2010). Founded on similar tenets as agency theory (see sub-section 2.4.1 for a discussion of agency theory), the Anglo-American CG model assumes that corporations are publicly-owned, where their primary objective is to maximise shareholder wealth, and that shareholders who supply a bulk of the capital are widely-dispersed. Therefore, to address the agency problem, that is, the likelihood of principal-agent conflicts, shareholders are expected to utilise CG mechanisms to minimize agency problems (Reed, 2002b, Aguilera and Jackson, 2003, Aguilera and Jackson, 2010, Siddiqui, 2010).

The most conspicuous CG mechanism within the Anglo-American model is the single-tier board of directors, which is charged with the responsibility of hiring (and firing) managers within firms. The one-tier board of directors ideally comprises a mix of inside/executive and outside/independent directors with a higher proportion of the latter preferred to enhance board independence, and subsequently promote the monitoring function of boards. Additionally, the appointment of the board of directors by shareholders ensures that the latter

retain significant influence on managerial actions, relative to other stakeholders. This is due to the susceptible position which shareholders assume within firms as *residual risk bearers*<sup>3</sup>. Nevertheless, one major concern with the shareholder model is the risk that managers may pursue their own selfish interests, resulting in loss of shareholder wealth. This problem is further compounded by the fact that shareholders are unable to oversee the day-to-day behaviour of the managers (Weimer and Pape, 1999, Reed, 2002b, Letza et al., 2008).

Accordingly, shareholder rights protection through strong investor laws is considered as an integral part of the shareholder-based governance. Enforcement of shareholder rights depends on effective judicial system and timely court processes making these key pillars of the Anglo-American CG model. The model also envisages large investors as being instrumental for CG progress, as they possess significant voting power with potential to influence corporate policies for the benefit of the shareholder constituency. Such large shareholders are further viewed as better poised to safeguard good CG by vigorously voting against unfavourable managerial decisions, and removing underperforming directors (Shleifer and Vishny, 1997, La Porta et al., 2000). Moreover, the presence of large shareholders makes it easier to convene an extra-ordinary meeting in case there is an urgent issue threatening the survival of the firm. Finally, professional organisations such as accountancy and human resource management bodies are viewed as essential pillars of Anglo-American CG, where they are expected to enhance the professional competence of CG actors. In this regard, key CG actors such as auditors and members of key sub-committees of board such as audit and remuneration committees are usually required to be

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<sup>3</sup> Shareholders are considered as *residual risk bearers* because they rank last as claimants to a firm's assets in case of dissolution after the interests of all other claimants have been met (Fama, 1980).

members of professional bodies, which are then expected to promote good professional behaviour amongst their membership (Uddin and Choudhury, 2008).

An ideal corporate environment is viewed, from an Anglo-American CG perspective, as comprising a thriving and *efficient market*<sup>4</sup>, where stock prices reflect all available information and the market participants are further assumed to possess some level of sophistication. This is regarded as a fundamental condition for the market-based model to achieve effectiveness in solving CG problems within publicly-traded firms. Moreover, the labour markets are assumed to be flexible enough to enable the shareholders to identify competent individuals for appointment as board members, as and when required; thus, underscoring their significance in the functioning of Anglo-American CG. Another significant characteristic of the Anglo-American CG is the *market for corporate control*, which is recommended as a CG mechanism of last resort and which shareholders may exercise in punishing errant managers (e.g. Bradley et al., 1999). Ideally, displeased shareholders can sell-off their stakes in the market, where new shareholders purchase them; subsequently, replacing the underperforming management. Accordingly, managers have an incentive to meet shareholders' expectations to avoid losing their positions in a take-over process (Weimer and Pape, 1999, Reed, 2002b, Aguilera and Jackson, 2003, 2010, Bradley et al., 1999).

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<sup>4</sup> An *efficient capital market* is one that has low transaction costs, timely information at minimal costs, and all shareholders have diversified portfolios. The security prices also adjust rapidly such that market participants cannot make abnormal profits beyond the prevailing market prices (Fama, 1980).

The US and the UK CG standards exhibit differences in two areas where the former is *rules-based*<sup>5</sup> and entrenched in US federal law, while the UK CG code is *principles-based*<sup>6</sup> serving as voluntary guidelines for good CG practices. The other difference between the US and UK CG codes emerges from their recommendations concerning board leadership. In this regard, the former is indifferent to separation of board chair and CEO roles, while the latter recommends the separation of chair and CEO's positions. This separation of duties is intended to allow the chair to provide leadership to the board, while the CEO oversees the day-to-day firm operations and simultaneously act as an advisor to the board of directors (Arjoon, 2006).

Lastly, despite the Anglo-American governance model's widespread application in many LDCs, including Kenya, emerging evidence suggests that the model may have failed to solve many CG problems. This therefore puts to question the rationality behind the adoption of Anglo-American governance within LDCs contexts (Paredes, 2005, Tsamenyi et al., 2007, Tsamenyi and Uddin, 2008, Uddin and Choudhury, 2008, Siddiqui, 2010). For this reason, the researcher intends to contribute to a topical debate concerning the applicability of Anglo-American CG model within a non-traditional setting by investigating Kenyan firms' response to an externally originating (Anglo-American) CG code that is practiced in Kenya.

The next section below provides a discussion of literature about the reality of CG practices in various LDCs.

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<sup>5</sup> The *rules-based* governance framework implemented in the USA comprises regulations whose non-compliance is harshly punishable under the government laws (Adegbite, 2012).

<sup>6</sup> The UK CG system assumes a 'comply or explain' approach – the *principles-based system* – where instead of prescriptive rules, firms are required to follow the laid down CG guidelines and/or give reasons for any non-compliance (Adegbite, 2012).

## **2.2 Review of CG Work in Africa and Other Less Developed Countries (LDCs)**

### **2.2.1 Context Building**

Before the early 2000s, implementation of CG codes as well as CG research within LDCs was ‘practically non-existent’. Besides, not only was little known about CG practices in these countries but, initial observations indicated poor investor treatment owing to absence of explicit investor protection mechanisms and ineffective court systems (Shleifer and Vishny, 1997). However, the need for CG within developing economies was exemplified by the Asian financial crisis of 1997-1998/9 (Gibson, 2003, Millar et al., 2005), and the supervening global corporate scandals such as Enron and WorldCom (Tsamenyi and Uddin, 2008).

Accordingly, multilateral organisations including OECD thus encouraged countries to adopt CG principles in order to avert a repeat of corporate failures. Moreover, the reliance of LDCs on international financial agencies for financial aid, availed an opportune moment to propagate CG reforms. Unlike other more advanced countries, the dependence of poor developing countries on donor aid meant that compliance with these requirements was met with hastened efforts and little resistance in order to qualify for aid (Reed, 2002a, Tsamenyi and Uddin, 2008, Siddiqui, 2010). Yet, these CG reforms were largely styled along the Anglo-American CG model (Uddin and Choudhury, 2008, Siddiqui, 2010), with the intention of aligning developing countries with this dominant ‘international economic order’ (Reed, 2002b).

Nevertheless, while the implementation of CG within LDCs has been reported as having resuscitated their corporate sectors (e.g. Waweru, 2014, Mangena et al., 2012, Mangena and Tauringana, 2007, Munisi and Randøy, 2013), critics have questioned the universal application of Anglo-American CG within LDCs. This is after evidence from previous research indicated that codes of CG practices borrowed from advanced countries have not been able to solve various CG challenges emanating from within LDCs contexts (Klapper

and Love, 2004, Tauringana et al., 2008, Ehikioya, 2009, Adegbite, 2015, Adegbite and Nakajima, 2011). Besides, some writers have further argued that the assumptions underpinning the CG codes implemented within LDCs are, incongruent with the business environment prevailing within their markets. This includes local factors such as culture and traditions which stand in the way of ‘imported’ CG regulations; where codes are not adapted to fit the peculiar characteristics present within the contexts where they are intended for practice (Okike, 2007, Soobaroyen and Mahadeo, 2008, Tsamenyi and Uddin, 2008, Uddin and Choudhury, 2008, Wanyama et al., 2009, Adegbite et al., 2013, Adegbite and Nakajima, 2012).

The discussion below provides a comprehensive review of literature explaining how the institutional environments of various LDCs, constrain the effective implementation of their transplanted CG codes.

### **2.2.2 Critique of CG Research in Africa and Other Similar LDC Contexts**

This section provides a review of CG literature with a view to identify gaps in research, which underpin the research questions guiding this study. This literature review enabled the researcher to identify five themes, which serve as the pillars upon which CG is practiced in various countries. Moreover, the five themes were found to have been used as points of departure, jointly and/or individually, in previous CG discussions pertaining to LDCs. This study thus aligns with the preceding debate, and is also well positioned to make relevant contribution to a topical subject of CG within LDCs (Okeahalam, 2004, Reaz and Arun, 2006, Uddin and Choudhury, 2008, Siddiqui, 2010, Okpara, 2011, Rashid, 2011). The discussion in this section is organised into five CG themes: (a) legal and regulatory framework; (b) ownership structures and shareholder rights; (c) boards of directors; (d) role of stakeholders in CG; and (e) financial transparency and disclosure.

As Adegbite (2012) argues, CG research within LDCs should assume a broader view, as opposed to simply the traditional themes of *boards of directors* and *top management*. This

writer further suggests that, such broad approach to CG research potentially enables researchers to make meaningful contribution to a limited CG literature concerning LDCs. The themes discussed in this literature review are also based around the six key standards of CG covered by the OECD principles of 2004 (Organisation for Economic Co-operation and Development, 2004).

Notably, there is paucity of CG research in Africa, and therefore filling that gap is one of key objectives of this thesis. Subsequently, the literature reviewed in this thesis incorporates studies carried out in non-African LDCs, such as Bangladesh, which demonstrate comparable institutional legacy and economic characteristics with African countries. This decision is intended to supplement the scarce CG research in Africa. For instance, and similar to Kenya, where this research is situated, Bangladesh shares a British colonial heritage and has also adopted the Anglo-American CG model. Bangladesh is also reliant on overseas donors for financial assistance, including the IMF and World Bank (Siddiqui, 2010, Uddin and Choudhury, 2008). Therefore, various studies conducted in Bangladesh concerning the applicability of Anglo-American CG code within the country, have been included in the following sections in order to supplement the limited literature on CG in Africa. With the above understanding, the discussion below reviews the challenges constraining each of the five CG themes identified from extant literature (see subsections 2.2.2.1 to 2.2.2.5). The discussion below finds the five CG themes as being the most important pillars for the effective implementation of CG codes. Accordingly, this thesis argues that serious weaknesses in one or more of the CG pillars, has potential to impede CG practices in a country.

#### ***2.2.2.1 Legal and Regulatory Framework***

Enforcement and monitoring of CG implementation has been recommended as a basis for effective CG model (OECD, 2004). Research has also shown that a robust regulatory framework should comprise legal, regulatory and enforcement systems which regulate firm



behaviour and the actions of associated CG stakeholders to ensure compliance with laid down CG regulations (Adegbite, 2012). Key institutions that constitute regulatory environments of firms commonly found in most countries include: (a) capital market regulators and securities exchange commissions; (b) companies registry; (c) professional accounting bodies; and (d) courts of law (Wanyama et al., 2009, Fan et al., 2011, Rashid, 2011). The discussion below shows how each of these institutions potentially lack capacity to support effective implementation of CG in various LDCs.

### ***Judicial systems***

Ideally, an efficient judicial system should dispense justice fairly and on a timely basis, and act as guardian of commercial laws within its jurisdiction in order to, support the process of CG through increased openness and transparency. For this reason, the legal protection of shareholders is argued to be a key pillar for supporting all other CG mechanisms (Shleifer and Vishny, 1997, La Porta et al., 2000, Wanyama et al., 2009). However, Jesover and Kirkpatrick (2005) observed that the applicability of CG principles within non-OECD countries might be problematic due to weak court systems. Factors found to contribute to weak law enforcement include underfunding and lack of qualified human capital in these institutions (Jesover and Kirkpatrick, 2005). Besides, Okike (2007) found the legal framework for monitoring firms in Nigeria to be lacking due to insufficient penalties, where contraveners of certain corporate codes pay fines of about ten (British) pence. As noted, this appeared as a convenient option for many culprits who disregarded CG regulations (Okike, 2007). Similarly, Okike's work provides useful insights into the way inadequate judicial systems potentially constrain the effectiveness of CG. Their study exclusively utilised secondary data, and this thesis intends to enhance such understanding by including primary data in the forms of experiences of judicial actors or other CG practitioners. Accordingly, this thesis achieves that objective by employing a mix of both secondary and primary data, which further enhances the validity of findings reached. Lastly, although it implicitly appears

that agency theory may have been utilised in the research, it is difficult to discern the number of theoretical perspectives used in the research. The use of institutional theory, particularly, would have been useful in understanding how such complexities of Nigeria's institutional environment constrain the practice of CG within her corporate sector.

Okpara (2011) used a mix of semi-structured interviews and questionnaire survey, and analysed the interview and questionnaire data using template analysis and confirmatory factor analysis methods, respectively. This writer found that weak legal and regulatory framework undermined the development of CG in Nigeria. Okpara (2011) concluded that judicial systems in Nigeria should be strengthened through increased resource allocation and more staff training in order to bolster the CG process. Wanyama et al. (2009) also used a mix of semi-structured interviews and questionnaire survey to investigate the capacity of institutional framework in Uganda in nurturing good CG practices. The writers found that a shortage of judges together with corruption within the judiciary, adversely affected its ability to support good CG environment. Wanyama et al. (2009) concluded that although Uganda had in place explicit CG regulations, their effectiveness was impaired by imperfections within the institutional environment where the judicial system failed to play its role effectively, as a monitor of CG implementation. For this reason, a new institutional sociological perspective appears to be a suitable lens for understanding how the institutional background of a country (i.e. rules and culture), facilitates or hinders the effectiveness of CG mechanisms meant to support the practice of CG.

### ***Summary***

From the preceding discussion, corruption and bribery, together with inadequate resources – both human and capital – emerge as the biggest constraints to efficient judicial systems in Nigeria and Uganda. Nevertheless, it would be interesting to investigate whether other problems exist, as well as the extent of support accorded by Kenya's judicial system in reinforcing good CG within the country. This is particularly timely given that the country

promulgated a new constitution in year 2010, which also promised a raft of changes including an overhaul of the judicial structures, to get rid of corruption and expedite determination of cases (Mutunga, 2013).

### ***Regulatory bodies***

The effectiveness of a CG framework is also largely dependent upon the efficiency with which supporting regulatory bodies discharge their mandate. Examples of such bodies include the companies' registry; capital market regulators/securities exchange commission, and professional organisations. These bodies mainly perform extrajudicial supervisory roles in ensuring that firms abide by all necessary corporate regulations as well the provisions of the company law (Okeahalam, 2004). Although these organisations are formed as distinct but complementary regulatory bodies, their responsibilities occasionally overlap. Furthermore, such regulatory bodies are collectively important in promoting good CG environment, as the regulatory framework lays the basis for the implementation of CG guidelines. Arguably, therefore, their lack of collaboration is likely to affect the quality of CG in a country (Barako et al., 2006, Waweru, 2014).

Okeahalam (2004) reviewed the state of CG in four African countries (Kenya, Nigeria, SA and Zimbabwe) and observed that poor CG practices existed partly due to failures in the regulatory framework, which in theory ought to oversee compliance with specific CG requirements. It was found that Kenya's companies registry lacked the capacity to support good CG, as the office lacked the basic resources including technology and capacity (Gatamah, 2001, cited in Okeahalam, 2004). This made it almost impossible to manually oversee the compliance of more than 20,000 companies with the basic provisions of Companies Act (Chapter 486, laws of Kenya). In a recent parliamentary inquiry, the Registrar of companies also admitted that two registered companies shared the same name for a period of six years without detection (NTV Kenya, 2013). This may be due to lack of computerisation, since such problems would be easy to notice with basic technology.

However, while the two sources (Okeahalam, 2004, NTV Kenya, 2013) signal an incapacitated registry of companies, none of these, or other works, to the best of my knowledge, has conducted an in-depth research to understand how weaknesses within the company registrar's office impact on the quality of CG in Kenya. Okeahalam (2004), for instance, relies on desk research and acknowledges that the scope covered by the paper is significantly narrow due to a dearth of CG records in Africa.

Similarly, stock exchange authorities and professional accounting organisations have been argued to play a central role in the development of CG within LDCs. Besides the former issuing listing regulations, they are also charged with responsibility of overseeing their execution by all listed firms. Professional accounting bodies on the other hand, promote good CG through standards setting which their members are expected to comply with, or attract sanction for noncompliance. For instance, key CG actors such as auditors or audit committee chairs are required to be members of professional bodies. Therefore, their involvement in corporate irregularities is likely to attract penalty, or loss of membership and/or licence to practice, subsequently resulting in job loss. This way, the enforcement performed by professional bodies in ensuring their members conduct themselves ethically and professionally, helps in promoting good corporate behaviour (Siddiqui, 2010, Okpara, 2011).

Siddiqui (2010) examined the development of CG in Bangladesh with a view to understand the suitability of the Anglo-American governance model adopted in that country. This author observed that the Bangladesh Securities Exchange Commission (BSEC) acted as the primary stock market regulator on behalf of the government, and was responsible for issuing the CG codes as well as regulating the CG practices. The author found the BSEC to be an ineffective regulator due to the following factors. Political interference was rife as four of its board members including the chairman are usually political appointees. Political interference was further exacerbated by the fact that BSEC relied on the government for funding its

operations. Next, Siddiqui (2010) noted that BSEC also lacked the capacity expected of a regulator because it suffered from shortage of staff, with the available workforce also lacking appropriate skills. He concluded that Bangladesh's CG codes might be fulfilling legitimacy desires, that is, firms complied with CG regulations in order to appeal to investors or avoid reprimand from the government, as opposed to efficiency causes. However, the writer does not give the details of his research methodology but it appears that he may have relied on secondary data, in which case the research may be further improved through primary data such as through interactions with key CG practitioners. This would help to understand the challenges they face in implementing CG codes within Bangladesh's institutional environment.

Okpara (2011) used a mix of interviews and questionnaire surveys, and established that the Nigeria Securities and Exchange Commission (NSEC) may have contributed to the poor CG environment prevailing in the country. This author reported that NSEC never took any actions when listed firms failed to comply with CG guidelines, nor instituted investigations despite complaints about managerial misconduct and minority shareholders abuse. Okpara (2011) further concluded that auditors knowingly endorsed manipulated financial accounts, which was detrimental to the consumers of those reports, and consequently the standards of CG. This lack of professionalism was attributed to moribund professional accounting bodies, which failed to check auditors. However, Okpara (2011) does not provide reasons why NSEC failed to promote good CG climate despite that being its regulatory mandate, nor the causes behind the ineffective professional organisations. This limitation may have rendered his findings less practical, particularly in assisting policy makers to improve the regulatory climate of CG in Nigeria.

### ***Summary***

Analysis of this first theme, legal and regulatory framework, indicates that CG codes in Africa, and possibly other LDCs, are potentially ineffective without adequate backing by the

legal systems. However, this observation appears to suggest that *principles-based* systems of CG might be unsuitable for use within LDCs, where *rules-based* CG systems may be more successful as a result of the accompanying active supervision (Adegbite, 2012). Conversely, nonetheless, available evidence suggests that enforcement agencies within LDCs are unable to fulfil their regulatory responsibilities due to problems such as corruption, lack of funding and resources, and poorly trained staff. This research therefore seeks to examine the extent to which the regulatory framework in Kenya sustains the development of CG within the corporate sector. The thesis further aims to identify factors which might be standing in the way of the legal and regulatory framework, subsequently hindering CG progress. Lastly, and to the best of the author's knowledge, no prior research has sought views from representatives of the main regulatory bodies in Kenya including: (a) capital markets authority, (b) registry of companies, and (c) the Institute of Certified Public Accountants of Kenya (ICPAK). The present study therefore aims to incorporate views from representatives of those regulatory institutions in order to, overcome the aforementioned shortcoming and also, understand extent to which they support the development of CG as key stakeholders in the corporate sector. Essentially, literature reviewed in this section shows that the lack of an effective legal and regulatory framework is likely to render a code of CG practices unworkable.

#### ***2.2.2.2 Ownership Structures and Shareholder Rights***

For CG codes to sustain their effectiveness as assumed within the Anglo-American governance, shareholders are expected to actively participate in the CG process. Unlike the stakeholder-oriented governance, where managerial behaviour is expected to be monitored by other actively-engaged stakeholders, such as employees or banks, in addition to the shareholders; the Anglo-American model relies heavily on shareholders to keep managerial behaviour in check. Shareholders have a responsibility to appoint well qualified directors to serve as their trustees, and also function as focal point between the firm and the external

environment. Shareholders review firm performance and use AGMs to ask questions where necessary, and also dismiss any director deemed to be underperforming (Uddin and Choudhury, 2008, Siddiqui, 2010). In theory, shareholders play a significant role in promoting the CG mechanism of disclosure and transparency, and as users of financial statements they are expected to demand high quality annual reports (Barako et al., 2006). Moreover, the Anglo-American structure of governance assumes that shareholders are widely dispersed, and have the benefit of market for corporate control where they can punish poorly performing management, by readily selling their stakes through takeover processes (Dalton et al., 2007, Ehikioya, 2009, Filatotchev and Boyd, 2009). Against this background, the ensuing critique arose from a survey of literature which argues that shareholders within LDCs may be unable to fulfil their duties in promoting good CG.

*Large vs. minority shareholders:* Barako et al. (2006) used panel data to assess how among other factors, ownership structures influenced voluntary disclosure by listed firms in Kenya. The author reported that disclosure decreased with increase in number of shares owned by the large shareholders. This finding suggests that the concentrated ownership structure within firms in Kenya may be detrimental to good CG practices. It also contradicts seminal work by Shleifer and Vishny (1997) which argued that large shareholders can help reduce agency costs through increased monitoring of management. However, while Barako et al. (2006) findings suggest that presence of large shareholders may have some negative implications for firm governance, it would be interesting to see how this affects minority shareholders. It is possible that the writers may have missed out on that explanation because they did not include primary data in their study, such as interviews with representatives of shareholders, and instead relied on secondary data (annual reports and official documents). Consistent with La Porta et al. (1999) finding that ownership structures in developing countries tend to exhibit concentrated rather than dispersed ownership, Ehikioya (2009) found that firms in Nigeria also assumed a concentrated shareholding structure where

majority shares were held by few families. Using panel data technique where secondary data was collected from firm annual reports and stock exchange publications, Ehikioya (2009) further established that concentrated ownership was positively associated with firm performance and increased market valuation. This was linked to the benefit of increased monitoring associated with large shareholders (see Shleifer and Vishny, 1997). Ehikioya (2009) nonetheless cautioned that the presence of more than one family member sitting on the board was likely to diminish the benefits derived from concentrated ownership as it impacted negatively on firm performance. While the research reaches some interesting findings, the researcher is silent about the relationship between minority shareholders and the controlling shareholders, a significant issue in emerging economies CG, where agency problems are argued to manifest largely as conflicts between controlling and minority shareholders (La Porta et al., 1999, Young et al., 2008).

*Missing shareholder sophistication:* Investors are assumed to be sophisticated in terms of being sufficiently informed, being knowledgeable in drafting efficient contracts, as well as being able to use the financial markets to their advantage. This level of sophistication is also argued as an effective supplementary mechanism for legal protection (La Porta et al., 2000). However, using a mix of documentary evidence and semi-structured interviews, Angaye and Gwilliam (2009) investigated the development of CG in Nigeria where they found that absence of shareholder sophistication hampered CG progress. They concluded that investors in Nigeria are typically passive and do not raise a voice when their rights are infringed upon, nor seemed aware of those rights. The writers also suggested that it was likely that majority of shareholders lacked basic understanding of the way financial markets operate. Angaye and Gwilliam (2009) finding may be taken to imply that such shareholders are potentially unable to use important CG mechanisms such as the market for corporate control, or demand higher transparency and disclosure, or even confront underperforming directors during AGMs. In accordance with this discussion, this thesis will examine how shareholders impact



the practice of Kenya's CG code. Furthermore, Tauringana et al. (2008) noted that Kenyan listed firms are mandated to allocate 25% of their IPO offers to local investors, a fact they associated with low levels of shareholder sophistication since majority of population are rural-based and less educated. These writers recommended firms to publish their information in two languages – English and Swahili<sup>7</sup> – in order to increase ability of local shareholders to comprehend the annual reports. However, Tauringana et al. (2008) study only covered a two year period (2005-2006) notwithstanding possible availability of more data. This thesis will overcome this shortcoming by analysing data pertaining to shareholders for an extended duration, that is, more than ten years since adoption of CG in Kenya in 2002, subsequently increasing the number of observation. Lastly, this thesis will include discussions with Kenyan shareholders or their representatives in order to examine extent of shareholder sophistication within the corporate sector. It is also anticipated that such in-depth interviews with assist in supplementing findings reached by Tauringana et al.'s (2008) study.

### ***Summary***

Barako et al. (2006) and Ehikioya (2009) reached contrasting findings about the role of large shareholders in CG. Barako et al. (2006) associated majority shareholding with poor CG, while Ehikioya (2009) supported large investors. Conspicuously missing in their works is how minority shareholders rights prevail within LDCs CG environment, which is understood to be dominated by large shareholders. Angaye and Gwilliam (2009) provides a detailed analysis of investor behaviour in Nigeria, which appeals to the present study for replication in the Kenyan context. Also, Tauringana et al. (2008) used data for two years, that only utilises secondary sources and does not include views from representatives of shareholders. This opens an opportunity to incorporate primary data in this thesis. Lastly, concerns have emerged that most shareholders in Kenya fail to attend AGMs, with one of the largest listed

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<sup>7</sup> Swahili is Kenya's lingua franca.

companies reported to have had only 0.17% of its total shareholders turning up for its AGM in 2010. This leaves the minority shareholders more vulnerable, and their interests potentially prone to abuse by majority shareholders who usually sit on the boards of their firms. Moreover, shareholders in some companies fail to demand accountability from the board and top management, even when their firm reports losses or AGMs are delayed (Juma, 2010).

### ***2.2.2.3 Boards of Directors***

Boards of directors are considered to be a core mechanism of CG, because of the significance of responsibilities performed by them. As appointees of the shareholders, boards oversee the actions of management in performing their executive duties to minimise conflicts of interest. In addition, boards are expected to update the shareholders about the progress of their firm both through providing audited financial statements, and also by calling for an AGM at least once annually. Boards also perform control duties by instituting effective audit functions to promote quality financial reporting as a way of reassuring the shareholders. Furthermore, boards provide strategic direction to a firm, where they make major financial decisions such as acquisition of new equipment and property, or other fixed assets. As such, the effectiveness with which boards perform these functions impacts greatly, positively or otherwise, on firm performance (Eisenhardt, 1989, Zahra and Pearce Li, 1989, Zahra and Pearce Li, 1990, Aguilera, 2005).

Besides, achieving the optimal board effectiveness is argued to be a product of four features: board *composition*, *characteristics*, *structure*, and *process* (Zahra and Pearce Li, 1989). Well constituted boards ought to include both inside/executive and outside/independent directors, with diverse set of skills and adequate professional experience. The structure of such boards involves sub-committees such as audit, nomination and remuneration committees which focus on specific areas of firm operations to enhance efficiency. Other factors such as how regularly a board meets and ability to self-appraise its performance, are argued as significant

in the delivery of board roles (Zahra and Pearce II, 1989, Desender et al., 2013). Conversely, the evidence discussed below appears to suggest that boards in LDCs may be less effective owing to various contextual factors which lead to imbalances in the four board features discussed above. This consequently affects the quality of CG in these countries.

In an attempt to understand how the institutional environment influences CG development in Ghana, Adu-Amoah et al. (2008) utilised documentary evidence and semi-structured interviews; where they found that socio-political factors constrained good CG. They noted that board processes were deeply-rooted in the local cultural context which undermined their effectiveness. For instance, whereas the CG code requires board chairs to possess relevant skills and experience, the Ghanaian culture has utmost 'respect for age'. This means that only the eldest member of the board would assume chairmanship, irrespective of there being other more qualified board members. Also, in this multi-ethnic country, the writers noted that shareholders were unlikely to elect directors who did not come from their community notwithstanding their suitability to serve in the board. Subsequently, boards ended-up having directors who neither understood their duties nor how to interpret the financial statements. Accordingly, Adu-Amoah et al. (2008) questioned the usefulness of Anglo-American CG systems in LDCs, arguing that this model would only achieve practicality when customised to deal with such contextual idiosyncrasies. This finding opens an opportunity for similar research in Kenya, to explore how social reality possibly affects board appointments as well as their decision-making process. However, Adu-Amoah et al. (2008) concentration on the banking sector limited the generalisability of their findings. This thesis overcomes that limitation by providing a cross-industry analysis of the topic.

Wanyama et al. (2009) evaluated the quality of CG in Uganda using data gathered from questionnaires and interviews, where they found that poor CG practices prevailed despite the adoption of 'detailed' CG codes. One source of the misfit, as they argue, arises from the fact that directors neither understand their roles nor the need for good CG. They also note

that poor remuneration demotivated company boards, making them vulnerable to corruption as managers would bribe directors to rubber stamp executive decisions. This subsequently compromises boards capacity to perform their fiduciary duties effectively. They also found that in the Ugandan culture, poor people look up to the more successful members of society for assistance. As such, directors are culturally coerced to have their friends and relatives employed in the firms which they serve in, despite such people sometimes being under qualified. As Wanyama et al. (2009) further argue, such actions may be interpreted as nepotism from a CG standpoint, while in the Ugandan culture that is viewed as a good gesture of giving back to one's community. The findings by Wanyama et al. (2009) offer valuable insights concerning the potential conflicts which exist between the assumptions of CG codes and institutional environments – in this case sociocultural norms – within which such codes are implemented. Their findings further affirm the argument by Charkham (1994) cited in Adegbite and Nakajima (2012, p.184), that “foreign systems of CG reflect their history, assumptions, and value systems.” Consequently, the adoption of western-originated CG codes within LDCs is likely to encounter tensions, due to differences in the value systems of countries where such codes emanate and LDCs contexts, where they are implemented.

Okpara (2011) examined the factors which hindered the development of CG in Nigeria, and using a mix of questionnaires and in-depth interviews established that, despite most firms having in place board features such as those required under CG guidelines, good CG was lacking. The writer reported that up to 90% of respondents noted that directors failed to neither supervise management nor provide strategic direction to their firm. Additional evidence showed that minority shareholders were denied opportunity to speak during AGMs for fear they might criticise board actions, where boards also imposed auditors on the firms, and engaged in insider trading. Interestingly, most boards were found to have met a number of CG requirements including being independent. Okpara (2011) attributed the poor quality of boards to unqualified individuals serving as directors, political interference which affected

board independence and also ineffective regulatory systems which failed to vet directors and reprimand rogue managers. Whilst it is unclear about the period covered by Okpara's (2011) study, the fact that their work was published in 2011 suggests that the state of CG within Nigeria's corporate sector has hardly improved since adoption of the first code of CG practices in 2003. Finally, this thesis will examine whether similar findings exist in the case of Kenya with a view to understand how constraints within her institutional environment affect CG process.

### ***Summary***

The three studies reviewed above offer interesting findings about the vulnerability of boards to institutional constraints. As argued, company directors are unlikely to execute their fiduciary duties owing to problems as: favouring older (and sometimes less qualified) directors from own tribe (Adu-Amoah et al., 2008); poor remuneration and corruption (Wanyama et al., 2009); lack of skills and political interference (Okpara, 2011). These challenges which emanate from the institutional background of these countries are likely to affect the effectiveness of company boards in discharging their responsibilities. Indeed, Zahra and Pearce II (1989, p.330) argue that "board of directors are among the most venerable instruments of corporate governance". Inefficient boards, therefore, such as those which are poorly constituted, or those whose tasks are impeded by various institutional constraints, may be a source of incompatibility resulting in failure of LDCs CG codes to realise their intended practicality.

Accordingly, although no research to the best of my knowledge has investigated the role of directors on CG development in Kenya, recent media publications have revealed that many boards may be overwhelmed by various challenges. These problems include poorly qualified directors, lack of board independence and political interference, board in-fights together with 'old-boy networks' which have resulted to inbreeding of ideas (Irungu, 2010). Thus, this thesis intends to understand how these and other challenges identified from the data

collected, manifest within the institutional environment and subsequently affect CG development.

#### ***2.2.2.4 Firm Relations with Stakeholders***

In the context of corporate political activities, other non-shareholding constituencies might wield sufficient potential to side-track firm operations in their own favour, whilst this may be at variance with shareholders' expectations. This is likely to compel firms to build relations with such actors in an attempt to gain legitimacy and guarantee firm survival. Arguably, this behaviour is more pronounced in developing economies, which due to their unstable markets have 'uncertain and complex' environments, thereby making it difficult for firms and management to strictly play by the rules of CG for fear of falling out with their influential stakeholders (Crittenden and Crittenden, 2012). Reflectively, the developing nature of Kenya's economy involves many structural challenges which may affect firm decisions in various ways, consequently unsettling CG progress. For example, in a country with high unemployment levels, it is not uncommon for locals to interrupt normal firm operations in Kenya, alleging that they want employment despite their lack of necessary job qualifications and experience (NTV Kenya, 2012b, NTV Kenya, 2013, Sayagie, 2016). This may force the firm management to consider employing more people from the locality on top of the existing wage bills, in order to avoid future unrests which result in loss of work hours. However, shareholders may view this as an attempt to diminish their wealth through reduced share returns. On reflection, this can be a potential source of tension between shareholders and stakeholder groups such as local communities.

Besides, African societies are further argued to be largely communitarian, and hence their values are likely to be different from the traditions of Anglo-American societies which define the assumptions of the Anglo-American governance (West, 2006). Using the context of South Africa, considered as one of the largely successful countries in designing its own and more practical CG code (*see* Rossouw, 2005, Vaughn and Ryan, 2006), West (2006, p. 439)

stated that South African society identifies more with “the rights and interests of community” as opposed to those of individuals. This is espoused in the *ubuntu*<sup>8</sup> philosophy which serves as a moral basis guiding individual interaction within South African traditions. The writer further observes that the South African corporate structures resemble those postulated in the Anglo-American framework, including one-layer board and a market-oriented financial system. However, compared to the stakeholder model of CG implemented in South Africa (SA), an Anglo-American model as argued would achieve little success for lacking practicality with the socio-economic situation prevailing in SA (West, 2006). On reflection of West’s argument, Kenya might be sharing similar socio-economic reality which might hinder the Anglo-American CG model from reaching meaningful success. Firstly, *harambee*<sup>9</sup>, a Kenyan tradition, may be likened with *ubuntu* where the former also encourages communitarianism and call for authorities to ‘involve’ people in policy implementation (Kithiia and Lyth, 2013). The need to consult widely before, say, decision making by directors, or even the communal ownership of property; may, contradict with tenets of Anglo-American CG including independence of company boards and individual ownership rights to property respectively. Furthermore, West observed that measures taken to address social inequalities in Africa also conflict with Anglo-American expectations. For example, similar to SA Employment Equity Act, Kenyan capital market laws require listed firms to have at least one third of either gender represented on boards. This is largely aimed at promoting affirmative action for women (Lumumba, 2012). Likewise, the Black

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<sup>8</sup> *Ubuntu* is a south African philosophy emphasizing sharing and sense of community as moral principles to guide individual interaction on all levels (West, 2006). Its English translation means “I am because you are” (Mbiti, 1989 cited in West, 2006, p. 439).

<sup>9</sup> *Harambee*, a Swahili word appearing on the Kenyan coat of arms, is the official motto of Kenya and implies “all pull together” (Gueorgieva, 2012, p.1).

Empowerment Act (West, 2006) is similar to the requirement for ten-per cent of public contracts to be awarded to Kenyan youth-owned businesses which may have implications in state-owned listed companies. In connection with this, Okeahalam (2004) observed such small-to-medium enterprises may depend on such contracts for survival hence potentially encouraging corporate corruption.

By the same token, the value attached to communal entitlement of property by African societies is likely to result in occasional conflicts with the requirements of shareholder-based CG codes. For instance, media reports suggest that the *harambee* issue might still be a major challenge for Anglo-American CG practices within LDCs, since non-shareholding communities in some parts of Kenya have been found to eject duly appointed firm managers, who are seen as less loyal because they do not come from the same ethnic tribe as the local community. This way, communities interfere with CG when they interrupt firm processes through protests and threats of withholding raw materials to the affected firms. Similarly, such communities reportedly demand (sometimes violently) a share of company's resources, and a voice in its control (NTV Kenya, 2012a, K24 TV, 2014).

Siddiqui (2010) also argues that LDCs socio-economic contexts might be incompatible with a shareholder-oriented governance model. Using the case of Bangladesh, the writer pointed out that Anglo-American CG is forced on corporations by government and donor-funded regulators, which results in firms adopting CG for legitimacy purposes rather than efficiency reasons. Using two theoretical perspectives – agency theory and NIS – to investigate the applicability of Anglo-American governance in Bangladesh, it was established that Bangladesh exhibits poorly developed markets, poor labour conditions, and influential multilateral organisations within the corporate sectors. Moreover, there is reliance by firms on bank credit which poses a threat on financial system due to a default culture. As such, representation of banks on company boards in Bangladesh is particularly important in order to avert an arguably imminent risk of financial crisis from soaring debts, for a corporate



sector which relies heavily on bank financing (Siddiqui, 2010). Similarly and due to the shallowness of the capital markets in Kenya, the banking industry dominates the financial markets as the main source capital for firms (Ngugi et al., 2009). This therefore raises the question of whether a country such as Kenya with seemingly little shareholder activity (see section *b* above), would benefit from active involvement of stakeholders such as banks in the CG process. Accordingly, based on Siddiqui's suggestion as well as argument within this subsection, stakeholder theory is adopted as one of the multiple theoretical perspectives in this study. This permits the researcher to examine how stakeholders of listed firms in Kenya may be implicated in the CG process, that is, whether they facilitate or constrain CG activity. In this manner, the researcher will be able to understand from a variety of possible sources of influence, which stakeholder entities, besides the shareholders, might have more influence on the emergence of CG practices in Kenya.

### ***Summary***

While a search of literature doesn't reveal much research effort on how stakeholders affect CG development within LDCs, the discussion above suggests that certain corporate actors wield sufficient power to impede the development of shareholder-focussed governance. In particular, certain strategies adopted by firms may conflict with shareholders objectives despite being crucial for firm survival in Kenya's turbulent environment. As an instance, some underprivileged communities occasionally disrupt firm operations demanding jobs without necessary qualifications, which may potentially coerce managers to employ them to avoid future interruptions (e.g. Sayagie, 2016). Perhaps in the spirit of *harambee*, other non-shareholding communities expect a share of firm resources, along with consultation before managers serving in their area are appointed. Furthermore, in an attempt to improve the socio-economic welfare of Kenyans, the government has in place laws which require fair gender representation on boards, the allocation of certain percentage of contracts to youth, as well as regional balancing in employment. These are likely to have implications on the

quality of CG. This also raises question on whether the government as the issuer of the CG code, did so for legitimacy reasons rather than efficiency purposes. At the same time, perceivably little shareholder activity within Kenya's corporate sector, coupled with firm reliance on bank capital, motivates this study to understand whether more stakeholder involvement in the CG process would enhance CG development in Kenya. The considerations above warrant inquiry in order to understand whether an Anglo-American or a stakeholder model would be the most suitable in a developing country like Kenya. To paraphrase Wanyama et al. (2009) argument, this is particularly important considering the outcome of stakeholder CG model in use within continental Europe and Japan; which, has successfully aligned with the social situation within those countries, and where the Anglo-American model is perceived as unlikely to have achieved similar success.

#### ***2.2.2.5 Financial Transparency and Disclosure***

Transparency and disclosure is an important CG mechanism which helps firm owners to minimize the problem of information asymmetry. This mechanism allows shareholders to keep track of executive actions, through receiving material information regarding the decisions made by management in the course of running the firm, in addition to the remuneration they take from the company. The resultant accountability helps to safeguard shareholder wealth since executives have little room for shirking their duties, or misappropriating firm resources (La Porta et al., 2000, Okike, 2007, Okpara, 2011).

Furthermore, accountability permits firms within emerging markets to access low cost foreign capital (Claessens and Yurtoglu, 2013); while in Africa, increased transparency has been further recommended as an appropriate measure for combating the widespread corporate corruption (Okeahalam, 2004, Adegbite, 2012). However, despite significance of transparency and disclosure and their associated implication in CG, the situation in some LDCs suggest that this CG mechanism may be constrained owing to various contextual factors as reported below.

In Kenya, Barako et al. (2006) examined factors influencing voluntary disclosure of listed companies using a quantitative methodology. They used data from annual reports which they tested and established that presence of audit committee together with institutional and foreign ownership was positively associated with voluntary disclosure. They also found the presence of non-executive directors to be negatively associated with disclosure. On average, they noted that listed companies in Kenya voluntarily disclose more information above the regulatory requirements, but whose level was still lower than that by companies in many developed countries. However, Barako et al. (2006) study period covers the years 1992-2001, a period which Kenya had not yet adopted the current CG guidelines, whose applicability within the corporate sector is being examined by this thesis. Additionally, the Capital Markets Authority of Kenya (CMA), the regulatory body supervising CG implementation, indicated in its 2012 annual report that *disclosure* was the most breached CG provision (Capital Markets Authority, 2012). This study therefore intends to investigate the likely issues which affect CG practices in Kenya, together with reasons why listed firms fail to adhere to minimum CG disclosure requirements.

Tsamenyi et al. (2007) also examined disclosure practices of firms listed at the Ghanaian stock exchange (GSE), and using data collected from annual reports developed disclosure scores for 22 of the 25 listed companies. Their findings revealed that disclosure levels for listed firms were still very low despite the country's implementation of World Bank and IMF backed CG reforms. The writers argued that the concentrated ownership structure of the Ghanaian firms constrained disclosure levels, as little information about the boards of directors was disclosed as required. Furthermore, directors (both independent and executive) were appointed only by the large shareholders, who also used AGMs to push through their own interests. The writers further established that approximately 19 of the listed companies are small-sized, which potentially explained the low disclosure arguing that large firms tend to disclose more information than small firms. Also, Tsamenyi et al. (2007) associated the

low disclosure levels in GSE listed firms with the fact that majority firms had high debt capital relative to shareholders funds. For this reason, they argued that debt financiers have less impetus to demand increased disclosure since their investments are protected under insolvency laws, and therefore firms had less pressure to disclose more information.

Uddin and Choudhury (2008) utilised a qualitative-based study to understand the development of CG practices in Bangladesh. The authors conducted 26 in-depth interviews, along with documentary evidence, and participant observations where they established that Bangladeshi corporate culture was a significant cause for non-compliance with CG regulations. Specifically, the researchers found that majority of listed companies had family members sitting on boards, and due to the close-knit nature of family institutions were less inclined to be transparent for fear that family information would get to the public domain. Also, some board members of family-controlled firms would tunnel firm resources to other privately held companies and with the secrecy shrouding such firms, boards would bribe auditors to conceal such misdeeds which continued for many years. Surprisingly, Uddin and Choudhury (2008) found that many families would dominate the boards of various companies despite such families sometimes owning little shares. Although Uddin and Choudhury (2008) argument appears to suggest a mismatch between the assumptions of western CG codes and the local corporate culture in Bangladesh, it does not indicate the extent to which such variation manifests.

Samaha et al. (2012) examined CG disclosure of top 100 listed firms at the Egyptian stock exchange (EGX) and employed content analysis technique to develop five CG disclosure indices from data collected from annual reports and company websites. These indices include: (a) ownership structure and exercise of control rights disclosure sub-index (OSE); (b) financial transparency and information disclosure sub-index (FT); (c) board and management structure and process disclosure sub-index (BM); (d) corporate responsibility and compliance disclosure sub-index (CR); (e) auditing disclosure sub-index (AUD). Then,

the writers using an ordinary least squares (OLS) procedure, tested the overall CG disclosure index against various CG mechanisms including: board size, duality, audit committee, directors' ownership and number of shareholders, and block holder ownership. They found disclosure levels to be low, with companies only meeting the minimum requirements stipulated by EGX. Samaha et al. (2012) suggested that the low levels of disclosure may be due to laxity by the stock market body and therefore recommended increased regulatory oversight. They also associated the results with socioeconomic developments in Egypt, including a volatile political climate and social strife, rampant corruption, and disregard of rule of law which passes unpunished. However, besides mentioning these contextual factors, their study does not explain how they are implicated in CG disclosure. Perhaps this limitation may be due exclusive use of agency theory, which lacks ability to explain social factors which affect CG (see discussion in section 2.3.1). Samaha et al. (2012) findings reveal that the institutional environment of Egypt has a significant impact on the practice of CG within its corporate sector. Their findings support the line of enquiry pursued by this PhD thesis, which examines the applicability of Kenya's CG code within the constraints of its institutional environment. Notwithstanding, this thesis utilises an institutional perspective, in addition to other CG theories employed – agency theory and stakeholder theory – in order to gain a comprehensive understanding of the manner in which institutional factors affect the implementation of Kenya's code of CG practices.

### ***Summary***

The discussion in this section – financial transparency and disclosure – demonstrates the peculiarity of CG environments within LDCs. It is such idiosyncrasies that are argued in the present study to be incompatible with the assumptions of western-originated CG codes, thus impeding effective implementation of those codes. For instance, the presence of audit committee, and institutional and foreign ownership were found to promote voluntary in Kenya (Barako et al., 2006). This is consistent with assumptions of Anglo-American CG

and extant literature (Shleifer and Vishny, 1997). It is surprising, nonetheless, to see that presence of non-executive directors on Kenyan boards has negative impact on firm disclosure (Barako et al., 2006). This finding is inconsistent with the provisions of Kenya's CG code which require firms to appoint at least "one third" non-executive directors on their boards (CMA Act, 2002, section 3.1.2, pp. 483). It is possible that Barako et al.'s (2006) peculiar finding may be caused by factors within Kenya's institutional environment, which the present study seeks to uncover. Next, Tsamenyi et al. (2007) found disclosure levels of listed firms in Ghana to be low notwithstanding the implementation of an international CG code. They explain that the low disclosure levels are because of the small size of listed firms, arguing that large firms tend to disclose more information than the former. It will thus be interesting to see how firm size relates with disclosure levels in the case of Kenya, particularly considering that some of the listed firms were initially family-owned businesses. Similarly, Uddin and Choudhury (2008) find that majority of listed firms in Bangladesh are controlled by families, a factor the author associates with the low disclosure levels observed. This is an interesting observation to consider in the case of Kenya, where a number of listed firms potentially have strong family ownership. Finally, Samaha et al. (2012) note that rampant corruption together with weak legal environment in Egypt inhibit transparency and disclosure within firms. This thesis will examine how such and other institutional constraints likely to be prevalent within LDCs contexts affect disclosure practices of firms in Kenya, as well as its CG landscape in general.

### *Summary of key papers*

This subsection presents a summary table of the key empirical papers, which the researcher considers as important evidence about the notion of universal applicability of the Anglo-American CG framework within LDCs. The information in the table provides a synopsis of the preceding critique of CG work within LDCs contexts, that is, subsections ‘2.2.2.1’ to ‘2.2.2.5’ above.

**Table 2.1: Summary of key empirical studies**

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
(Barako et al., 2006)  Kenya	43 Kenyan listed companies	1992-2001	<ul style="list-style-type: none"><li>• Annual reports</li><li>• Stock exchange records</li></ul>	<ul style="list-style-type: none"><li>• Disclosure index</li><li>• Multiple regression analysis</li></ul>	<ol style="list-style-type: none"><li>1. Audit committees were found to be strongly associated with voluntary CG disclosure.</li><li>2. Ratio of non-executive directors was negatively associated with voluntary disclosure.</li><li>3. Institutional shareholding and foreign ownership were reported as having positive association with voluntary CG disclosure.</li><li>4. Large firms and firms with high debts voluntarily disclosed more information than small and less leveraged firms respectively.</li></ol>

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
(Tsamenyi et al., 2007)  Ghana	22 Ghanaian listed companies	2001-2002	<ul style="list-style-type: none"> <li>• Annual reports</li> <li>• Stock exchange publications</li> </ul>	Content analysis	<ol style="list-style-type: none"> <li>1. Disclosure levels are generally very low due to widespread concentrated ownership structure, which affects CG disclosure.</li> <li>2. Large firms disclose more information than small firms.</li> </ol>
(Adu-Amoah et al., 2008)  Ghana	9 CEOs of rural banks	Not Available	<ul style="list-style-type: none"> <li>• Documents (annual reports; minutes of board meetings; government and regulatory records)</li> <li>• Semi-structured interviews</li> </ul>	Thematic analysis	<ol style="list-style-type: none"> <li>1. The process of board appointments is influenced by the local culture, subsequently affecting board independence and overall CG implementation.</li> </ol>



Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
(Tauringana et al., 2008)  Kenya	36 Kenyan listed companies	2005–2006	Annual reports	Multiple regression analysis	<ol style="list-style-type: none"> <li>1. It took an average of 74.5 and 76.47 days to release annual reports for listed firms, in years 2005 and 2006 respectively.</li> <li>2. Proportion of finance experts on audit committee, and frequency of board meetings were found to be negatively associated with time taken to release annual reports.</li> <li>3. Firms that report in both English and Swahili languages were quick in releasing their annual reports compared to those reporting using only English language.</li> </ol>
(Uddin and Choudhury, 2008)  Bangladesh	26 interviewees (including: accounting practitioners; managers; shareholders; company directors; academics; representatives of stock	Not available	<ul style="list-style-type: none"> <li>• Semi-structured interviews</li> <li>• Field notes</li> <li>• Documents (annual reports, companies</li> </ul>	Not available	<ol style="list-style-type: none"> <li>1. Despite families being minority shareholders in most companies, they wholly control all company affairs including dividend policies and AGMs through their representative directors.</li> </ol>

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
	market, aid agencies, investment companies and Securities Exchange Commission		websites, official documents, regulatory reports, newspapers)		2. Other hindrances to CG development were found to include: political interference and powerful cultural traditions.
(Angaye and Gwilliam, 2009)  Nigeria	20 CG stakeholders from business, government, regulators and academics	Not Available	<ul style="list-style-type: none"> <li>• Semi-structured interviews</li> <li>• Documents (annual reports, web pages, newspapers)</li> </ul>	Thematic analysis	1. Poor CG practices and ineffective regulatory framework continue to hamper CG progress in Nigeria.
(Okpara, 2011)  Nigeria	296 managers, company presidents, and board of directors  15 firms for in-depth interviews	Not Available	<ul style="list-style-type: none"> <li>• Questionnaire survey</li> <li>• In-depth interviews</li> </ul>	<ul style="list-style-type: none"> <li>• Confirmatory factor analysis for questionnaires</li> </ul>	1. Implementation of CG is hindered by institutional constraints including: a) weak or non-existent law enforcement mechanisms b) abuse of shareholders' rights

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
				<ul style="list-style-type: none"> <li>• Template analysis for interviews</li> </ul>	c) lack of commitment by boards of directors d) disregard of the regulatory framework e) weak enforcement and monitoring systems, and f) lack of transparency and disclosure.
(Wanyama et al., 2009)  Uganda	<ul style="list-style-type: none"> <li>• 16 semi-structured interviews</li> <li>• 158 questionnaires</li> </ul>	Not Available	<ul style="list-style-type: none"> <li>• Semi-structured interviews</li> <li>• Questionnaire survey</li> </ul>	Not available	1. Despite adoption of good CG codes in Uganda, their effectiveness has been severely hampered by contextual factors including corruption, inadequate regulatory institutions, and overwhelming traditional culture.
(Adegbite and Nakajima, 2012)  Nigeria	<ul style="list-style-type: none"> <li>• Used snow-balling technique</li> <li>• 42 respondents participated in structured interviews'</li> </ul>	Not Available	<ul style="list-style-type: none"> <li>• In-depth interviews</li> <li>• Focus groups</li> <li>• Direct observations</li> <li>• Case studies</li> </ul>	Thematic analysis using NVivo software	1. National codes of CG are embedded within the institutional environment. 2. Challenges the notion of universal codes of CG due to idiosyncrasies of individual countries institutional arrangements

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
	and focus group sessions.				
(Adegbite, 2012)  Nigeria	<ul style="list-style-type: none"> <li>Used snow-balling technique</li> <li>42 respondents participated in structured interviews' and focus group sessions.</li> </ul>	Not Available	<ul style="list-style-type: none"> <li>In-depth interviews</li> <li>Focus groups</li> <li>Direct observations</li> <li>Case studies</li> </ul>	Analytic induction using NViVo software	<ol style="list-style-type: none"> <li>Codes of CG are influenced by individual country's institutional arrangements.</li> <li>Institutional arrangements are inseparable constituents of every country.</li> </ol>
(Samaha et al., 2012)  Egypt	100 Egyptian listed firms	2009	<ul style="list-style-type: none"> <li>Companies websites</li> <li>Annual reports</li> </ul>	Content analysis and multiple regression analysis	<ol style="list-style-type: none"> <li>CG disclosure was lower for companies with: (a) CEO-chair duality, and (b) high ownership concentration.</li> <li>On the other hand, CG disclosure increased with: (a) proportion of independent directors on the board, and (b) firm size.</li> </ol>

Study & Country	Sample	Period	Type of data	Analytical approach	Major findings
(Adegbite et al., 2013)  Nigeria	<ul style="list-style-type: none"> <li>Used snow-balling technique</li> <li>42 respondents participated in structured interviews' and focus group sessions.</li> </ul>	Not available	<ul style="list-style-type: none"> <li>In-depth interviews</li> <li>Focus groups</li> <li>Direct observations</li> <li>Case studies</li> </ul>	Thematic analysis using NViVo software	<ol style="list-style-type: none"> <li>CG is a contested subject where different CG actors attach varied meanings to CG practices.</li> <li>Nigeria's peculiar institutional environment including corruption and weak regulation renders the shareholder model unworkable, thereby leaving the stakeholder model as the next best alternative.</li> </ol>
(Waweru, 2014)  Kenya and South Africa	50 largest South African listed firms and 49 Kenyan listed companies	2006–2010	<ul style="list-style-type: none"> <li>Companies websites</li> <li>Annual reports</li> </ul>	Content analysis and multiple regression analysis	<ol style="list-style-type: none"> <li>Audit quality and firm performance were reported as the main factors influencing the quality of CG in both countries.</li> </ol>

### 2.2.3 Limitations and Gaps in Current Research

This study has been incentivised by a number of gaps and weaknesses within existing literature, which the researcher seeks to address simultaneously. Review of extant literature revealed that there is scanty research on CG in Africa and other LDCs (Wanyama et al., 2009, Adegbite and Nakajima, 2012), with an even little output of high-quality CG studies in Kenya – the focus of this study. Furthermore, there appears to be a shortage of rigorous empirical research on CG in Africa since the first generation<sup>10</sup> of research predominantly consisted of review works and less intense empirical output, as it was ‘too early’ to appraise the development of CG within these contexts (Reed, 2002b). This might be because majority of these countries have recently adopted CG codes (Zattoni and Cuomo, 2008), which therefore makes this research a timely investigation of CG progress within a sufficient timeline of slightly over a decade.

Secondly, while this review found some recent attempts devoted to examining CG in Kenya, (*see* Barako et al., 2006, Tauringana et al., 2008, Nyamongo and Temesgen, 2013, Waweru, 2014), all these studies appear to have primarily used agency theory with only Nyamongo and Temesgen (2013) complementing the agency lens with stewardship and resource dependence perspectives. These writers have made good attempts to understand the nature of agency relationships in Kenya. I contend that due to the perceived limitations of agency theory (*see* section 2.3.1), there are some significant issues within the social context which need further investigation. For this reason, this study intends to apply an NIS perspective to understand how principal-agent relationships are defined by the institutional environment

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<sup>10</sup> The term *first generation research* is used in this thesis to refer to CG studies on LDCs which were carried out in the early 2000s immediately after the adoption of CG codes in various African and South-East Asian countries (*e.g. see* Ahunwan, 2002; Reed, 2002; Rossouw et al., 2002; Arun and Turner, 2004; Klapper and Love, 2004; Okeahalam, 2004; Tsamenyi et al., 2007; Adu-Amoah et al., 2008; Musikali, 2008).

within which they exist (Siddiqui, 2010, Adegbite and Nakajima, 2012). To the best of my knowledge this study is first to utilise an institutional perspective in researching CG in Kenya. Similarly, prior studies on Kenya have relied solely on secondary data (mainly annual reports). Thus, there is opportunity to consider qualitative data in form of interviews and field observations in order to enrich the existing CG literature. A qualitative approach is more appropriate in the scope of this thesis as it provides understanding concerning how the practice of CG code is influenced by perceptions and actions of CG actors (McNulty et al., 2013). Notwithstanding, majority of existing CG literature adopts a quantitative approach and has paid little attention to the influence social factors in the way CG is practiced. Such consideration would be best understood through qualitative analysis (Heracleous and Lan, 2012, Westphal and Zajac, 2013). To avail this opportunity, the thesis employed qualitative methodology that utilises primary and secondary data in order to benefit from “direct interaction with [actual] CG actors” with the aim of making significant contribution to theory (Zattoni et al., 2013, p. 119).

Thirdly, CG research in LDCs including the work done in Kenya has largely focussed on CG and performance link, and while the results have largely suggested a favourable relationship between good governance and firm performance (Claessens and Yurtoglu, 2013), a potential gap in research is evident. Available evidence suggests that various CG challenges continue to confront Kenyan firms notwithstanding the adoption of a formal code of CG practices (Outa and Waweru, 2016). These include poor CG disclosure by firms (Outa and Waweru, 2016, Amuguni et al., 2010, Irungu, 2013), and poor minority shareholders treatment (Waweru and Riro, 2013). Moreover, incidences of corporate irregularities including creative accounting, boardroom wars, majority shareholders expropriation, and

delays in AGMs affected listed firms such as CMC holdings and EAPCC<sup>11</sup> (Business Daily, 2013, Herbling, 2013a, Herbling, 2013b). Finally, the intentions of the Capital Markets Authority (CMA)<sup>12</sup> to hire experts to redraft the CG code, may be interpreted as an indication that the current CG framework needs improvement (Anyanzwa, 2013). This evidence reinforces the argument put forth by this study that the universal application of CG codes without appropriate adaptation to the situational reality of a country, is likely to result in variations between their intended benefits and the real outcomes (Uddin and Choudhury, 2008).

In light of the discussion above, the next subsection explains how the gaps and weaknesses identified have motivated the formulation of research question and choice of methodology proposed in this study.

#### **2.2.4 Implications for Research Question and Methodology**

On the basis of argument advanced in section 2.2.2, and limitations and gaps identified in section 2.2.3, this study examines the compatibility of an Anglo-American-styled CG model within Kenya's institutional context. Despite the existence of few studies investigating the applicability of western CG codes within LDCs, the researcher has established that they focus on a handful of LDCs including Nigeria, Ghana, South Africa, Uganda and Bangladesh (*e.g.* Rashid, 2011, Wanyama et al., 2009, Adu-Amoah et al., 2008, West, 2006, Adegbite and Nakajima, 2012) and therefore, this thesis seeks to expand this stream of research by offering evidence from Kenya. Moreover, very little is understood regarding the manner in which western-originated CG codes emerged within LDCs. This thesis therefore intends to

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<sup>11</sup> EAPCC is an acronym for East African Portland Cement Co. Ltd., the second biggest manufacturer of cement in Kenya (Herbling, 2013a).

<sup>12</sup> CMA is a semi-autonomous regulatory authority which oversees all capital market operations in Kenya (<http://www.cma.or.ke/>).



explore the evolutionary process of Kenya's CG code with a view to understand the factors which influenced its development, as well as extent of its similarity with the Anglo-American governance. Only two studies within extant literature, have provided a comprehensive historical analysis concerning the emergence of CG codes within LDCs contexts (*see* Siddiqui, 2010, Angaye and Gwilliam, 2009), hence this thesis's aim to address this gap.

Accordingly, and in order to address this thesis's research problem and more specifically its guiding research questions, the researcher intends to collect evidence from various sources including documentary and interview data from actual CG actors. This is aimed at developing understanding concerning factors which influence the practice of CG in Kenya. In this regard, the present study first provides a detailed contextual discussion of Kenya in Chapter 3 of this thesis. This context chapter lays foundation for the data analysis. It explains the factors and events which influenced the development of Kenya's CG code, and fulfils this by analysing various archival documents which provide evidence regarding the way in which the Kenyan CG code developed. Such documents which have been utilised in this thesis include newspaper reports, official documents, and other policy publications with information about various events and/or factors which culminated in the present code of CG practices in Kenya. Very few studies in existing literature provide an evolutionary analysis of CG codes within LDCs, and it is thus hoped that such understanding will permit an understanding of why Kenya's CG code is implemented in the manner explained in chapter 5 of this study.

In view of the above discussion, the eventual objective of this thesis involves examining factors which influence the manner in which Kenya's CG is implemented. To achieve this, the researcher analysed archival data including: company annual reports, official records and regulatory reports, and industry publications pertaining to CG in Kenya. Besides, detailed accounts of various actors involved in the Kenyan CG landscape are included in order to

understand how they carry out their CG functions, along with the way they make CG choices and perceive the process of CG. Such CG actors include directors of listed Kenyan firms, senior executives, officials of regulatory bodies, and CG trainers and academics.

Moreover, the present study aligns with the qualitative approach, as opposed to quantitative methodology, owing to the nature of its research questions and type of data required to address them satisfactorily. This is consistent with (Miles and Huberman, 1994, pp.1) explanation regarding what constitutes qualitative research:

- qualitative studies usually involve data “in the form of words rather than numbers”
- qualitative data constitutes “well grounded, rich descriptions and explanations of processes in identifiable local contexts”
- qualitative data aims to “preserve chronological flow, see precisely which events led to which consequences, and derive fruitful explanations” about the research problem.

Finally, and in accordance with the objectives of this PhD thesis, Saunders et al. (2012) observe that qualitative research seeks to create meanings whilst addressing research questions. These writers further note that such meanings are derivable only from qualitative data including: (a) accounts of research participants collected as interview data, and (b) archival records such as organisational documents, newspapers, official reports and policy publications, and video-recordings (Saunders et al., 2012).

The discussion in this section provides a general overview concerning the manner in which the thesis’s research questions together with their associated data, align with the qualitative methodology. Further explanation regarding the suitability of qualitative approach in this thesis, including reasons why it is the most suitable methodology over the alternative quantitative methodology, is provided in detail in chapter 4.

## **2.3 Theoretical Lens – The Role of Theory in Thesis**

Theories play a central role in research where they help scholars in choosing appropriate methods and data to use in addressing the research questions, such as those outlined in section 1.2.2 of this study. Theories also provide writers with a framework for interpreting the data collected (observed phenomena) to provide a systematic explanation, or prediction, which best addresses the research questions. Consequently, the evidence reached may help to strengthen or challenge the assumptions underlying a theory (Sutton and Staw, 1995).

In section 2.2.2 above, the researcher has reviewed empirical evidence concerning the universal applicability of Anglo-American CG within LDCs. Based on the gaps and limitations identified in section 2.2.2, the research questions formulated in this study are intended to explore the suitability of the Anglo-American CG model that has been adopted in Kenya. However, due to the nature of research questions guiding this study, the researcher has established that one theoretical lens may not be sufficient to gain a holistic view of the phenomena under investigation. In view of this, the study has adopted multiple theories to enable the researcher to explore the breadth and depth of the research problem.

This is considering that the research questions in this study do not fit wholly within the dominant CG theory, that is, agency theory (Filatotchev and Boyd, 2009). Also, agency theory suffers from some limitations as discussed in section 2.3.1 below. The nature of the research questions thus necessitated the use of multiple theories – agency theory, stakeholder theory, and new institutional sociology – to complement the agency perspective. At the firm level, stakeholder theory will help the researcher in overcoming the weaknesses of agency theory, which largely emanate from its narrow assumptions (Filatotchev and Boyd, 2009). In addition, the new institutional sociology (NIS) will enable the study to capture both micro- and macro-level issues which are likely to impact the emergence and subsequent implementation of Kenya's CG code. NIS is argued to be useful lens for explaining the organisational environment including formal institutions and societal factors such as culture

and traditions (Adegbite and Nakajima, 2012, Siddiqui, 2010, Rashid, 2011). Moreover, NIS has potential to provide writers with rich insights about the way the social environment within which CG actors' live, influences the choices they make in implementing CG regulations (Adegbite and Nakajima, 2012). The choice of NIS is thus informed by the inability of agency theory to capture such factors within a social context despite their potential to constrain the quality of CG (Filatotchev and Boyd, 2009).

With insights from economics (agency theory), strategic management (stakeholder theory), and sociology (NIS), this study has potential to make significant theoretical contribution to CG research (Okhuysen and Bonardi, 2011, Filatotchev and Boyd, 2009). As Hambrick et al. (2008, p. 382) argue, "CG does not begin and end with [agency theory]", and therefore while this perspective provides insights into the contracting framework within firms, stakeholder lens seeks to explain how key corporate actors outside the *agency contract* motivate or constrain CG mechanism. On the other hand, institutional theory will allow the researcher to understand how the institutional environment (law, regulations, and culture) influences CG practices in Kenya (Hambrick et al., 2008, Fan et al., 2011). Lastly, these three theories appear to promise the most comprehensive explanation for understanding CG reality in a developing country like Kenya, and contribute to a debate which is still developing.

Table 2.2 below provides an overview of the range of theories that have been utilised by writers researching similar research problems. The first column shows the papers' references together with the theories used by the author(s). The second to sixth columns show the five themes which have been discussed in the preceding empirical review (see section 2.2.2), with the tick marks indicating which of the themes have been discussed by the authors. The last column highlights some key conclusions from the papers included in the table.

**Table 2.2: Range of theories used in existing literature**

<b>Study &amp; Theories used</b>	<b>CG themes discussed in this study's literature review</b>					<b>Main conclusions</b>
	<b>Institutional and Regulatory Framework</b>	<b>Ownership Structures and Shareholders Rights</b>	<b>Boards of Directors</b>	<b>Role of Stakeholders in CG</b>	<b>Financial Transparency and Disclosure</b>	
(Barako et al., 2006)  <u>Theory</u> • Agency theory		√	√		√	Found negative association between board independence and voluntary disclosure.
(West, 2006)  <u>Theory</u> • Agency theory • Stakeholder theory				√		African traditions have a long history of 'communitarianism' which conflicts with assumptions of Anglo-American CG model, including: individual rights to ownership of property.
(Tsamenyi et al., 2007)  <u>Theory</u> • Agency theory	√	√	√		√	i. Companies do not file annual reports with registrar of companies as required.  ii. Disclosure levels are low in Ghana.

(Taurigana et al., 2008)			√		√	Proportion of non-executive directors in the board has no association with timeliness of company annual reports.
<u>Theory</u> <ul style="list-style-type: none"> <li>Agency theory</li> </ul>						
(Wanyama et al., 2009)	√	√	√	√	√	i. CG is still poor in Uganda despite there being all the necessary structures to support good CG including: (a) code of CG, (b) relevant institutions such as capital markets regulator, judiciary, and an accounting body.  ii. Recommended future studies to utilize the <i>new institutional theory</i> to explain how local factors such as poverty, corruption, traditions and culture affects CG implementation in LDCs.
<u>Theory</u> <ul style="list-style-type: none"> <li>Agency theory</li> <li>Transaction cost economics</li> <li>Stakeholder theory</li> </ul>						
(Siddiqui, 2010)	√	√	√	√		Whilst Bangladesh adopted an Anglo-American CG model, the institutional background is not compatible with this model of governance. Contextual features, i.e. ownership concentration and inefficient markets, conflicts with underlying assumptions of the model.
<u>Theory</u> <ul style="list-style-type: none"> <li>Agency theory</li> <li>Stakeholder theory</li> </ul>						

<ul style="list-style-type: none"> <li>• Institutional theory</li> </ul>						
(Rashid, 2011)  <u>Theory</u> <ul style="list-style-type: none"> <li>• New institutional sociology</li> </ul>	√	√	√		√	CG practices did not improve even after Bangladesh adopted CG codes. This is because many companies disregard CG regulations despite the existence of supervisory bodies. Also, poorly informed investors are unable to demand accountability from management.
(Adegbite and Nakajima, 2012)  <u>Theory</u> <ul style="list-style-type: none"> <li>• Agency theory</li> <li>• Institutional theory</li> </ul>	√	√				Nigeria has an explicit CG code but companies fail to implement the provisions of that code due to regulatory failures, and other hindrances such as corruption and bribery, political instability, poverty and unstable markets.
(Adegbite, 2012)  <u>Theory</u> <ul style="list-style-type: none"> <li>• Agency theory</li> <li>• Institutional theory</li> </ul>	√			√		CG fails to achieve the intended benefits as majority companies normally adopt CG without actual implementation. The failure to implement CG is attributed to deep-rooted hindrances within the Nigerian institutional background including: political interference, and culture of corruption.

(Samaha et al., 2012)	√	√	√		√	Disclosure levels were found to be low, and attributed to poor regulatory environment in Egypt.
<u>Theory</u> <ul style="list-style-type: none"> <li>Agency theory</li> </ul>						Socio-economic factors (i.e. corruption, political instability, lack of rule of law) in the Egyptian context were also found to hamper the implementation of CG codes.

A detailed discussion of this study's theoretical framework is provided below.



### **2.3.1 Agency Theory**

Agency theory suggests that agency dilemma persists within public firms when one party (principal), hires another party (agent), to perform some duties on their behalf (Jensen and Meckling, 1976). The agent/s with intent to increase own welfare may pursue objectives which are inconsistent with expectations of the principal/s, leading to agency problems (Ross, 1973; Jensen and Meckling, 1976). This is further complicated by the fact that most principals (shareholders) are not involved in day-to-day running of their firms (Jensen and Meckling, 1976; Fama, 1980). Thus, to safeguard shareholder wealth and firm continuity, firm owners incur agency costs to avert occurrence of agency problems (Fama and Jensen, 1983). In this regard, agency theory provides options for principals to pursue in controlling agency problems. For instance, shareholders may hire an independent board of directors to monitor managerial behaviour on their behalf, potentially resolving the problem of information asymmetry. Such independent board is also important for controlling opportunism and shirking behaviour on part of management. Employing the services of auditors to scrutinise management actions is another information systems technique at the disposal of shareholders in reducing agency problems (Shapiro, 2005). Agency theory also suggests the use of incentives (Eisenhardt, 1989), in dealing with contractual problems of agency contracting. Such incentives can take the form of bonuses and commissions given to managers when they attain pre-set targets, or even transfer of shares to managers so that they can co-own part of the firm, and subsequently refocus their commitment to the firm's objectives (Shapiro, 2005). The market for corporate control is another CG mechanism which shareholders can utilise to mitigate agency problems. This proposal is based on agency theory's assumption that firms operate in an efficient capital market, in which prices reflect all value relevant information. In such market, poorly managed firms are likely to fall in value and become takeover targets. Investors or other firms may then buy, the poorly-governed but cheaper firms and then replace the management. This takeover threat, and its associated uncertainty regarding the jobs of incumbent managers, motivates managers to

work hard in improving firm value to protect their jobs (Dalton et al., 2007). The above monitoring and control tools, when used appropriately, are argued within agency theory as being capable of improving CG practices, subsequently enhancing firm efficiency and performance (Dalton et al., 2007, Aguilera et al., 2008).

However, agency theory has not been without criticism. To begin with, reduction of agency contracting into principal-agent relationship is criticised for discounting the fact that firms comprise numerous principals who conflict with each other, and many agents who also conflict with one another (Shapiro, 2005). Agency theory's focus on principal-agent relationship also overlooks other important (non-shareholding) stakeholders. Secondly, whereas agency theory assumes that principals are well informed, some principals may lack expertise required to formulate efficient contracts. This is prevalent within LDCs where majority of shareholders lack sophistication, due to modest educational attainments or lack of experience in capital markets (Taurigana et al., 2008). Thus, managers who are more knowledgeable occupy a privileged position in the principal-agent relationship (Shapiro, 2005). This consideration also puts to question the explanatory power of agency theory in an emerging/inefficient market, such as Kenya. Thirdly, agency theory's suggestion of 'market for corporate control' as a tool for reinforcing 'good' CG, is impractical since efficient markets envisaged in theory are inexistent particularly within LDCs (Dalton et al., 2007). Finally, several studies utilising agency theory have reached mixed results, hence challenging the theory's analytical power (Filatotchev and Nakajima, 2010). Agency theory also fails to explain institutional factors that influence CG practices (Cuevas-Rodríguez et al., 2012, Wiseman et al., 2012, Filatotchev et al., 2013). This is argued to be partly because of agency theory's positivist standpoint (see section 4.1 for discussion about research philosophies) which neglects the idiosyncrasies of research contexts (Heracleous and Lan, 2012; Filatotchev et al., 2013). Considering above weaknesses of agency theory, this study includes a stakeholder perspective to examine how non-shareholder constituencies impact

Kenya's CG process (see section 2.3.2 below), and NIS perspective to gain understanding concerning how Kenya's institutional environment affects implementation of Kenya's CG code (see section 2.3.3). Notwithstanding, the agency perspective remains a relevant theory for researching CG as it provides valuable insights concerning the governance of modern corporations (Roberts et al., 2005). This thesis adopts agency theory to illuminate on Kenya's corporate sector with a view to understand how the country's shareholder-focussed CG code is practiced. Kenya forms an interesting setting for examining agency theory's assumptions as her capital market and economy are founded on a potentially different institutional environment than the one envisaged by originators of the theory.

## **2.3.2 Stakeholder Theory**

### ***2.3.2.1 Definitional discussion of stakeholder concept***

The origin of stakeholder theory can be traced as far back as the 1900s (*see* Hosseini and Brenner, 1992). However, Edward Freeman<sup>13</sup> has been hailed as the father of modern stakeholder theorising for his influential work in 1984, which various writers associate with the scholarly development within the field (Donaldson and Preston, 1995, Mainardes et al., 2011). Freeman defines a stakeholder as "any group or individual who can affect or is affected by the achievement of organisational objectives" (Freeman, 2010, p. 46). This writer further argues for a broader approach to stakeholder theory, noting that it is likely some stakeholders can affect the activities of a firm, even if they themselves are not affected by the firm's decisions. The essence of Freeman's argument is that managers should not only be mindful of the legitimate<sup>14</sup> interests of stakeholders on whom the firm depends for

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<sup>13</sup> See Freeman, R. E. (2010) *Strategic Management: A Stakeholder Approach*, Cambridge: Cambridge University Press.

<sup>14</sup> Legitimate interests of stakeholders include entitlements beyond what the managers are compelled by law to serve to the stakeholders (Heath and Norman, 2004).

survival; but also ‘illegitimate’ groupings which the firm has no mutual relationship with, but may affect a firm’s activities (Freeman, 2010, p. 52-53). In the context of this thesis, being ‘mindful’ as suggested by Freeman is considered to signify a need for managers to balance stakeholder obligations; by being attentive to the interests of all legitimate stakeholders, while keeping watch over the firm to prevent disruptive interferences by discontented or deleterious entities.

Whilst Freeman’s stakeholder definition appears to be the point of departure for most stakeholder discussions, Miles (2012) observed that the understanding of stakeholder concept has increasingly become a contested issue, both within and across disciplines. For instance, whereas 28 definitions of the stakeholder concept were found in literature about two decades ago (Mitchell et al., 1997), this number has risen to 435 definitions (Miles, cited in Miles, 2012). This puts to question the ability of writers to engage in meaningful debate whilst espousing dissimilar opinions regarding the core foundations of the same theory. Also, such wide-ranging discrepancies in the interpretation of stakeholder notion are likely to hamper the development of stakeholder theory (Miles, 2012). Furthermore, Tullberg (2013) notes that stakeholder literature tends to revolve around ‘definitional discussions’, oblivious of the risk of stagnation when writers spend considerable time arguing about meanings, instead of advancing stakeholder theory’s capability to explain organisational phenomena.

Finally, the many disagreements amongst authors as pointed out in this review of stakeholder theory, exposes the theory to criticism as discussed in sub-section 2.3.2.3 below.

### ***2.3.2.2 Major Variations of Stakeholder Governance***

This sub-section discusses the two main variations of stakeholder interpretation as evidenced in literature, where various writers have approached stakeholder theorising differently, based on their consideration concerning the relationship between a firm and its various stakeholders.

To begin with, stakeholder theory is argued to be a guideline for understanding the characteristics which qualify an entity to be recognised as a stakeholder in a firm. Nonetheless, firm managers might not be expected to satisfy the expectations of all stakeholders, but rather to remain mindful of their existence as well as likely impact on firm survival (Phillip et al., 2003).

Clarkson (1995) adopted a dualistic approach to stakeholder theorising, and classified firm stakeholders into *primary* and *secondary* stakeholders. According to Clarkson (1995), the smooth operation and survival of an organisation is dependent upon the ability of managers to satisfy the expectations of primary stakeholders who include: shareholders, employees, customers, suppliers, community and the government. Serving the interests of primary stakeholders' groups ensures that risks of withdrawal from the firm, by any of these constituencies, are minimised thereby eliminating interruptions to firm continuity. On the other hand, while secondary stakeholders are argued to be dispensable, they may impact or be impacted by firm operations potentially disrupting management's ability to fulfil the expectations of the primary stakeholder constituencies. Such secondary stakeholder groups include the media and other special interest groups which have no direct business relationship with a corporation. Clarkson (1995) supported a narrow approach to stakeholder governance arguing that primary stakeholders, those with legal relationship with a firm, are the only stakeholder groups with a legitimate claim on firm operations. Nonetheless, Mitchell et al. (1997) faulted Clarkson's work for restricting the interpretation of stakeholder management to merely the core stakeholders (shareholders, employees, customers, suppliers, community and the government). Mitchell et al. (1997) cautioned that whilst stakeholder management should assume a restricted approach, limiting stakeholder analysis to only those groups that have a legal contract with a firm is likely to be a 'blinder' to the influential power of various stakeholders on organisational outcomes. As argued, advocates of the narrow view emphasise on the legitimacy of stakeholders in identifying the core

stakeholders to a firm. Mitchell et al. (1997) further noted that managers should strive to serve the interests of only those stakeholders who not only hold legitimate claims within organisations, but also include those with urgent and powerful claims that may influence firm outcomes. This view is consistent with Tullberg (2013), who argued for a narrow approach to stakeholder management to include only those individuals and/or groups that have a mutual relationship with the firm, that is, those that the firm depends on for input, as well as those who utilise its output. Such stakeholders comprise: shareholders, customers, employees, managers and the local community.

Conversely, another argument advocates for a broader approach to stakeholder governance. Accordingly, the narrow stakeholder view is critiqued for being unrealistic and lacking pragmatism. This is because of the approach's exclusive focus on stakeholders merely having a reciprocal relationship with a firm, and ignoring other important stakeholders. This has also been partly blamed on management education which as argued tends to condition managers into focussing on selected stakeholders who have an economic relationship with their firms (Drisco and Starik, 2004). For these reasons, Drisco and Starik propose a criterion for stakeholder governance to include both human (employees, shareholders, suppliers, customers) and non-human stakeholders, including the industry peers and ecosystem within which business is carried out. As argued, these stakeholders are likely to result in a vital relationship with a firm due to their 'proximity', and continuous interaction (Drisco and Starik, 2004).

Similarly, a broader approach to stakeholder governance might be potentially useful to a firm in various ways, including facilitation in fulfilling the interests of primary stakeholders. For instance, broader stakeholder engagement with entities such as the government ensures a favourable business environment, while the ecosystem guarantees continuous flow of much needed resources thus enhancing business continuity. Such wider consideration of stakeholders is argued to facilitate the fulfilment of primary stakeholders' interests as well

as long-term business survival through increased sustainability, which the narrow stakeholder view overlooks (Clifton and Amran, 2011).

### ***2.3.2.3 Critique of stakeholder theory***

Stakeholder theory has been criticised by various writers who have argued that the theory suffers from deficiencies such as lack of clarity in its interpretation, lack of accountability on the part of management, and inconsistency with the objective of business (Sternberg, 1997, Phillips et al., 2003, Parmar et al., 2010, Carney et al., 2011, Jensen and Sandström, 2011, Mainardes et al., 2011, Miles, 2012). These limitations are discussed in detail below.

Stakeholder perspective has been faulted for its ambiguity owing to the lack of common ground between researchers regarding the understanding of key concepts of the theory. This contention arises mainly where authors disagree on what really qualifies as a significant stakeholder to merit management's attention (Parmar et al., 2010, Mainardes et al., 2011). For instance, Miles (2012) found numerous and contradicting definitions of stakeholder concept to exist within literature. This indicates weakness on part of stakeholder theory, and potential to inhibit its development. By largely assuming the source of stakeholders' conflicts as likely to emanate between stakeholder constituencies, stakeholder theory fails to recognise intra-stakeholder conflicts, that is, conflicts between entities within the same stakeholder group. Within the shareholder constituency, as an instance of stakeholder group, minority shareholders' interests might conflict with controlling shareholders; while tenured employees' interests may conflict with those of the casual employees. Such intra-stakeholder tensions though largely ignored within stakeholder debate, may evolve into severe stakeholder conflicts which aggravate CG problems (Sternberg, 1997, Carney et al., 2011).

Notwithstanding, critics of stakeholder theory raise concerns regarding the need for managers to consider the interests of diverse of stakeholders. They contend that managers are handed excessive leeway with which they may opportunistically exploit for selfish motives. Besides, managerial actions might be difficult to audit due to reduced

accountability, a problem that is likely to arise when managers engage in poor CG practices under the guise of serving the interests of other stakeholders, thus succeeding in concealing their unwanted behaviour. For instance, managers may allocate themselves huge perks thereby adversely affecting firm profits, but make the shareholders believe that profitability dropped because of increased employee wages or corporate social responsibility actions although that may not be the case (Phillips et al., 2003, Parmar et al., 2010).

Stakeholder management advocated for within stakeholder theory has been criticised as a likely hindrance to the objective of modern corporations. In this regard, the interests of various stakeholders conflict with each other, and attempts by management to balance such interests would further complicate firm operations (Jensen and Sandström, 2011). With its emphasis on the need to engage all stakeholders including shareholders, there is a potential risk that stakeholders' interests may diverge from the eventual firm objective – to maximise firm value. This observation leads to the conclusion that stakeholder management may be incompatible with the essence of public firms of increasing long-term owners wealth (Sternberg, 1997).

### ***Summary***

This section begins by reviewing the understanding of stakeholder theory, where it was identified that the concept of *stakeholder* remains contested in literature, as different researchers appear to disagree on what qualifies an entity to be regarded as a stakeholder. Subsequently, two major approaches – narrow and broad views – to stakeholder governance are discussed. The narrow view comprises those stakeholder groups which have an economic relationship with a firm. The broader view includes the core stakeholders espoused in the narrow view plus other stakeholders who potentially influence firm actions, albeit without any direct link between them and the firm. Accordingly, this study will adopt the broader stakeholder view in exploring which stakeholder groups have potentially significant influence on firm CG decisions, together with whether engaging certain stakeholder entities



may boost CG practices in Kenya. However, only those stakeholders found to have significant impact on CG activity, based on the data collected, are discussed in this study. Three general criticisms of stakeholder theory – ambiguity, lack of management accountability, and inconsistency with business – have also been discussed. Accordingly, recent CG research within LDCs has emphasised the need to utilise a stakeholder lens in similar studies. This is viewed as a good opportunity to understand, whether a stakeholder model of CG may offer better alternative, to arguably unsuitable shareholder-oriented (Anglo-American) CG model (West, 2006, Wanyama et al., 2009, Siddiqui, 2010). For these reasons, the stakeholder perspective is potentially useful in understanding how various organisational actors including stakeholders, affect organisational activities, subsequently constraining or promoting the quality of CG within Kenyan firms.

### **2.3.3 Institutional Theory**

The term ‘institution’ in this sub-section is intended to denote a set of patterns governing social behaviour, rather than implying an entity or organisation (Matthews, 1986). As such, institutional theory refers to a system of thinking which explains how social reality shapes organisational behaviour (Scott, 1987). North (1991, p.97) defines institutions as formal and informal constraints which in an attempt to “create order and reduce uncertainty”, are developed by society to govern human activities. Examples of formal institutions include government laws and policies, programs, and professions (Meyer and Rowan, 1977); while informal institutions take the form of taboos, customs, traditions and other cultural codes of conduct (North, 1991). Institutional theory as an analytical tool for organisational behaviour is argued to benefit researchers owing to its ability to move beyond market dynamics to the wider institutional context in explaining how broader issues (i.e. state, professions, social reality) influence organisational practices (Greenwood and Hinings, 1996). In addition, institutional theory postulates that organisations operate within a complex and enduring web of institutions, which force organizations to align their practices with that institutional

environment (Scott, 1987, Zucker, 1987). As Meyer and Rowan (1977, p.341) argue, “formal structures of many organisations [...] reflect the myths of their institutional environments instead of the demands of their work activities”. Accordingly, Zucker (1987, p.443) emphasise that the institutional tradition “provide[s] a rich and complex view of organisations”, by trying to understand how factors beyond human behaviour influence organisational performance. Another advantage of adopting an institutional lens in examining organisational behaviour is its unique ability to capture sudden or accruing changes within an institutional environment. Not least, institutional theory gives researchers an ability to view phenomena from a *micro* (organizational) or *macro* (environmental) level; over a short time frame or an extended duration (Dacin et al., 2002). The institutional tradition is further divided into two domains – old and new institutionalism (Selznick, 1996, Hirsch and Lounsbury, 1997). The ensuing discussion focusses on the new institutional theory since the old institutional theory is beyond the scope of this study.

### ***2.3.3.1 New Institutional Theory***

The new institutional theory, also known as *new institutionalism* (Powell and DiMaggio, 1991, p.2), or *neo-institutionalism* (Scott, 2001, p.28), refers to the branch of institutional theory which was pioneered by John Meyer in the late 1970s (Powell and DiMaggio, 1991, p.11). Broadly, neo-institutionalism focusses on the role of the wider external environment (both formal and informal institutions including: rules, procedures, culture and norms) on overall organisational behaviour. These institutions are considered to be ‘*processes*’ which endure for a long time as opposed to ‘*things*’ which take place disjointedly, and thus the reason why institutions are able to impact on organisational behaviour (Lowndes, 1996). Additionally, neo-institutionalism has been argued as offering a powerful analytical tool for explaining organisational phenomena in entirety. This is because this theory moves beyond the ‘*technical environment*’, that is, the industrial sector (market); to include the

*‘institutional environment’*, that is, the social reality within which organisations and their associated human actors are situated (Kraatz and Zajac, 1996).

Notwithstanding, this theory is further sub-divided into three broad theoretical perspectives: (a) historical institutionalism, (b) rational choice institutionalism and, (c) sociological institutionalism (Koelble, 1995, Hall and Taylor, 1996, Scott, 2001, p. 28-41). However, this study will focus only on sociological institutionalism, as the other two perspectives – rational choice and historical institutionalisms – are beyond the scope of this study.

### ***2.3.3.2 New Institutional Sociology***

The new institutional sociology (hereafter NIS) is argued to be an effective analytical tool for investigating both ‘institutions and individual actions’, that offers a richer view regarding how organisational reality manifests itself (Powell and DiMaggio, 1991, p.26-27, Koelble, 1995). NIS occupies a superior position of the neo-institutionalism theoretical strands, because of its ability to examine phenomena without predetermined assumptions. For example, in examining human behaviour, NIS moves beyond accepting individual preferences and rationality as the determining factors for human choices, and explores further to understand how the institutional environment within which individuals reside, shapes their perception and rationalisation of the decisions they make, as is the objective of this PhD research (Koelble, 1995). It is important nonetheless to recognise that although this study adopts the NIS instead of other neo-institutionalism lenses – rational choice and historical institutionalisms – the researcher is aware that all the perspectives have their own strengths and weaknesses depending on the research phenomena being investigated (Powell and DiMaggio, 1991, p.3, Koelble, 1995, Scott, 2001, p.69).

NIS assumes a typically inductive basis which is argued to be its greatest strength, for enabling the theory to reflect the breadth and depth of phenomena. This characteristic also makes NIS a suitable complementary perspective, for the more rigid economic theories of the firm such as agency theory. Conversely however, this flexibility of NIS whilst argued to

be its main advantage is also a source of weakness, as it has been pointed out that the massive amounts of data involved are not only time consuming but also complex to analyse qualitatively (Kalleberg, 1995). With roots from organisational theory, NIS is viewed as an attempt to bridge the gap that exists between the formal structures of modern organisations, and the equally powerful social environment (Hall and Taylor, 1996). Hall and Taylor (1996, p. 948) further observe that institutions assume a ‘*social constructivism*’ character in the way they shape organisational behaviour, for they not only “specify what one should do, but also provide the very terms through which meaning is assigned in social life”. Accordingly, NIS offers insights about the way institutional environment shapes individual choices, which consequently affects organisational reality (Powell and DiMaggio, 1991, p.11, Scott, 2001, p.44). Finally, institutions are argued to sustain their influence on organisational change through three ‘*isomorphic processes*’ – coercive, mimetic, and normative changes (Powell and DiMaggio, 1991, p.67). These three sources of isomorphism are discussed below.

### **2.3.3.3 Isomorphism**

The concept of *isomorphism* within institutional analysis was popularised by DiMaggio and Powell’s classic work of 1983 (Scott, 2001, p.43, Greenwood et al., 2008, p.80). Accordingly, isomorphism is defined as a homogenisation process through which organisations within an ‘organisation field<sup>15</sup>’ adopt/exhibit similar organisational structures and/or characteristics due to pressures from: (a) coercion by powerful forces; (b) uncertainty which leads confounded organisations to imitate their supposedly successful peers; (c) professional bodies which prescribe standards of organisational behaviour (Powell and DiMaggio, 1991, p.67-74). Interestingly, although organisations undergo changes to

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<sup>15</sup> Powell and DiMaggio, (1991, p. 64-65) defines an organisational field as a collection of organisations which “constitute a recognised area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organisations that produce similar services or products”.

conform to the demands of the institutional environment, that is, isomorphism; the transformation attained in their formal structures is more or less symbolic as they are argued to be motivated chiefly by a desire for legitimacy as opposed to efficiency reasons (Powell and DiMaggio, 1991, p.41, 65, Greenwood et al., 2008, p.93). Each of the three isomorphic processes is reviewed below.

#### **i. Coercive isomorphism**

The behaviour of organisations across an industry or sector, including their formal structures, is argued as potentially exhibiting resemblance, as they are largely subject to the same constraints within an institutional environment. This institutionally induced homogenisation – coercive isomorphism – derives from formal and informal pressures including: official laws and regulations, as well as culturally-derived rules and expectations (Powell and DiMaggio, 1991, p.67). As an instance, coercive isomorphism of organisations is evident where market regulators pass and enforce laws requiring corporations to submit audited financial accounts, or to constitute their boards of directors in a given manner. Those organisations which fail to comply with these regulations may be penalised, and for fear of that they conform to those regulations subsequently exhibiting similarity in organisational behaviour. Furthermore, similarities in organisational behaviour may be evidenced where organisations strive to adhere with culturally-defined norms and/or expectations, such as how to recruit individuals to fill key positions within the organisation, or how to interact with the community around it. These informal institutions are equally powerful and force organisations to align with cultural expectations in order to acquire social legitimacy and enhance survival prospects (Powell and DiMaggio, 1991, p.67, Scott, 2001, p.52-53).

#### **ii. Mimetic isomorphism**

Mimetic isomorphism refers to a mechanism through which organisational reality exhibits convergence of behaviour across an organisational field, i.e. within an industrial sector or corporate sector. Accordingly, mimetic isomorphism occurs as different organisations

imitate the behaviour of their supposed ‘legitimate or successful’ peers (Greenwood et al., 2008). For instance, ‘*mimesis*’ as this mechanism is also known, occurs when skilled employees change from one organisation to another and continue replicate their previous roles within their new organisation (Greenwood et al., 2008, p.83). Mimesis also manifests itself when new organisations, in an attempt to establish their structures and gain legitimacy, choose to model themselves along the frameworks of older organisations within their industry/sector. However, *uncertainty* is argued to be the principal cause for mimesis where organisations faced with unpredictable and/or little understood environments, elect to model themselves along their presumably successful peers. The latter may be aware or not that other organisations are copying it (Powell and DiMaggio, 1991, p.69-70).

### **iii. Normative isomorphism**

Occupational roles and professional organisations serve as another source of institutional pressure called normative isomorphism, and which impacts on organisational reality (Powell and DiMaggio, 1991, p.70-72, Greenwood et al., 2008, p.80). While different organisations usually have different people working for them in various occupational roles, it is argued that there are similarities in the manner in which they discharge their responsibilities. For example, human resource departments across an organisational field normally perform the role of hiring and training employees thereby exhibiting convergence of behaviour in many organisations. Moreover, professional bodies, such as accounting associations or law societies, are viewed as another source of normative pressures on organisational behaviour. This is because majority of such professions involve professional codes of conduct which define how their members perform their responsibilities or interact with other organisational actors (Powell and DiMaggio, 1991, p.70-72, Greenwood et al., 2008, p.80). Not least, normative isomorphism also occurs where different organisations engage the services of similar industry consultants, together with uniform director trainings

and management seminars involving participants across different organisations (Powell and DiMaggio, 1991, p.70-72).

#### ***2.3.3.4 Theory of new institutional sociology (NIS) in corporate governance research***

The application of NIS perspective in researching CG is not only gaining prominence in literature, but has also been argued as a befitting complement for the traditional agency theory which has previously dominated investigations within the field. While traditional CG theories have excelled at explaining the relationships between various corporate actors, e.g. principal-agent contracting and stakeholder relationships, within agency and stakeholder theories respectively, such theories have been criticised for having a narrow view of CG reality. For instance, by focussing merely on the actions of managers, an agency viewpoint misses out on crucial aspects of social reality which better explains the constraints within which the decisions and actions of the actors are rationalised and defined respectively (Davis, 2005, Fiss, 2008). It is at this point where an NIS lens avails a useful understanding about the way the institutional background shapes individual decisions and consequently delineates organisational behaviour, particularly so within emerging economies and LDCs contexts (Wanyama et al., 2009, Rashid, 2011, Adegbite and Nakajima, 2012).

In an attempt to gain a holistic view concerning the process of CG within LDCs, recent studies have expanded their theoretic focus towards, and also recommended other writers to incorporate, an NIS perspective alongside traditional CG theories (Wanyama et al., 2009, Rashid, 2011, Adegbite and Nakajima, 2012). Wanyama et al. (2009) investigated the effectiveness of CG regulations in Uganda and observed that although a detailed code of CG existed, actual CG practices were at variance with the regulations on paper. Drawing on an institutional lens, Wanyama et al. (2009) found that firm managers made decisions that contrasted with expected CG practices but which the managers rationalised as being culturally-acceptable within their communities. Accordingly, in a country where a majority of the populace live in extreme poverty, managers were found to be under pressure to provide

financial support to their clans and relatives, a factor that was found to be a cause for corporate corruption and bribery in order to be able to fulfil a cultural obligation (Wanyama et al., 2009). Similarly, Rashid (2011) using an NIS viewpoint critiqued the universal application of international CG regulations in Bangladesh, arguing that the country lacked the necessary institutional mechanisms to bolster the CG process. Rashid found that the institutions of *registrar of companies* and the *securities exchange commission* were permeated by corruption and mismanagement, which rendered them ineffective in fulfilling their functions. As such, they failed to effectively exert *coercive pressure* on firms to practice good CG. Additionally, Bangladesh's *professional accounting bodies* were also found lacking clear procedures for punishing deviant practitioners, and not following international best practices which weakened their ability to enforce CG code. These professional organisations failed to exert *normative pressure* on firms towards good CG practices (Rashid, 2011).

Adegbite and Nakajima (2012), another proponent of NIS perspective for researching CG within LDCs, argues that agency theory is insufficient to explain the misfit between CG codes and observed CG practices. These writers further argue that hindrances to CG development in Nigeria are institutionally-embedded, since they found CG decisions to be largely dependent on the belief systems and cultural norms of CG actors. Adegbite and Nakajima (2012) conclude by emphasising the usefulness of NIS in CG research, noting that it helps in understanding how the situational reality (including history, culture and norms) of a context, 'programs' organisational actors' decisions potentially rendering international best practices ineffective.

### ***Summary***

This sub-section set out to discuss institutional theory. It began by introducing the seminal understanding of the broader institutional tradition before narrowing the review to new institutionalism. At this point, NIS, a variant of neo-institutionalism, is discussed in greater



detail including a justification of its choice over alternative neo-institutional theories. Furthermore, three mechanisms of institutional change – *coercive* isomorphism, *mimetic* isomorphism, and *normative* isomorphism – are reviewed with a view to understand how institutional pressures influence organisational behaviour. *Coercive isomorphism* was found to be the most influential of the three isomorphic processes owing to the fact that it is forced on organisations through powerful laws and regulations, as well as persistent cultural norms. Next, *mimetic isomorphism* was noted as deriving from efficiency and/or legitimacy uncertainties which compel organisations to imitate the behaviour of their perceived successful peers. Thirdly, *normative isomorphism* is found to originate from professionalisation as professional bodies usually have codes of conduct, which practitioners across an organisational field are expected to observe, thus serving as a source of organisational change. Finally, the application of NIS perspective in CG research is further reviewed, and where the theory was found to be germane for complementing traditional CG theories which are noted as having a limited view of the institutional environment encompassing CG actors' decisions and their rationalisation. The discussion is informed by three studies which have used NIS in investigating CG practices within LDCs, subsequently yielding interesting insights about the state of CG in non-western contexts (see Wanyama et al., 2009, Rashid, 2011, Adegbite and Nakajima, 2012). This discussion demonstrates that failure to account for the contextual environment of organisations, may lead to a misconstrued understanding of CG reality, particularly within LDCs contexts.

#### **2.3.4 Implications for Research Question and Methodology**

The discussion in this section follows from the preceding section. It explains how the theoretical framework for this research, has informed the formulation of research questions and subsequent choice of methodology adopted. Firstly, and in view of agency theory's limitations (see section 2.3.1), this thesis's findings have potential to challenge and improve the explanatory power of the theory. For instance, agency theory assumes that information

is readily accessible to shareholders and other market participants at minimal or no cost. It also assumes that firm executives are transparent in their dealings and disclose all relevant information, to assist shareholders in making informed decisions. Similarly, agency theory presupposes the existence of adequate enforcement for agency contracts, in which shareholders have considerable influence over management actions. However, the prior review of empirical evidence within LDCs (see section 2.2.2) suggests that actual CG practices do not correspond with most of agency theory's assumptions, because of various contextual factors prevailing within LDCs. Such constraints include poor disclosure and transparency which exacerbates information asymmetry problems, while weak regulatory frameworks make it difficult to enforce the agency contracts. In this manner, the researcher has formulated research questions which focus on the relevance of agency theory's assumptions within a potentially different LDC context, such as Kenya's institutional environment in the case of this thesis.

Accordingly, the research questions formulated upon review of CG literature pertaining to LDC contexts, are that they cannot be explained using one theory (agency theory) and hence decision to adopt multiple theories including stakeholder theory and new institutional sociology (NIS). Stakeholder theory is intended to serve as an accompanying theory for agency theory. This way, stakeholder theory enables the researcher to overcome the various weaknesses of agency theory, particularly its failure to consider other actors within the CG landscape of firms, besides shareholders and managers. Moreover, NIS serves as the leading theory in this thesis. This is so as to allow the researcher to gain a broader view of the research problem, including the dynamism of Kenya's institutional environment within which her CG code is practiced. This is an important capacity which the other two theories – agency theory and stakeholder theory – lack<sup>16</sup>. Finally, NIS is argued to be a largely

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<sup>16</sup> See limitations of agency theory and stakeholder theory in subsections 2.3.1 and 2.3.2.3 respectively.

inductive theory which assumes a social constructionist epistemological stance in explaining research phenomena (see section 2.3.3.2 above). This consideration partly informed the choice of the qualitative methodology adopted in this study (see section 4.2 of this thesis).

## **2.4 Development and Refining of Research Question**

This section explains how the research questions listed in section 1.2.2 (Chapter 1) of this study were developed. As this study argues, there is lack of evidence that examines the compatibility of Anglo-American CG model with the institutional environment in Kenya. Besides, there is also very little understanding of this topic in other LDC contexts, and particularly so in Africa. It is for these reasons that the present study sets out to investigate how factors within Kenya's institutional environment influence the implementation of an Anglo-American-inspired code of CG practices within its corporate sector. To achieve that objective, this thesis begins by exploring the evolutionary process of the current CG code in Kenya, and then examines how the institutional environment influences the implementation of the same code. Accordingly, and to gain a better understanding about Kenya's CG process, the researcher solicited views from actual CG practitioners with a view to understand how the institutional environment defines their CG decisions. This consideration is important in understanding whether institutional factors such their beliefs or culture, or other socio-economic considerations, prevails over the decisions they make subsequently impacting Kenya's CG process. This concern is captured in the central research question guiding this study (see subsection 1.2.2.1).

To answer the central research question effectively, two sub-questions have been developed (see subsection 1.2.2.2). The first sub-question seeks to understand how the present Kenyan CG code emerged, including the key factors and events which shaped its evolutionary process. This follows the researcher's observation that very little is understood concerning the development process of CG codes within LDCs. Additionally, the researcher believes that such understanding has potential to explain why Kenya's CG code may be implemented in

the manner observed from the findings reached in the second sub-question. In this regard, and upon examining the evolutionary process of the Kenyan CG code, the second sub-question seeks to understand how the prevailing institutional environment within Kenya constrains the implementation of the CG code. Subsequently, the second sub-question examines how observed CG practices of Kenyan listed firms are influenced by the reality of the country's institutional environment.

#### **2.4.1 Theoretical framework illustrating connection between institutional environment and practice of CG in Kenya**

On the basis of the preceding literature review, Figure 2.1 illustrates the theoretical framework which has been developed with a view to critically analyse the practice of CG in Kenya. The framework depicts the connection between Kenya's CG code and the underlying institutional environment, which forms the basis upon which CG is practiced. It also underscores the underlying objective in this PhD thesis, which is, assessing the compatibility of Kenya's (Anglo-American-inspired) CG code within her prevailing institutional environment. The framework has five key interlinked components, each of which contributes to understanding the compatibility of foreign-originated CG codes within LDC contexts.

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Insert figure 2.1 about here  
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The first component is the underlying institutional environment, within which CG code is practiced. The institutional environment is represented in the framework as the "large rectangle" enclosing all other constituent parts. The institutional environment comprises various interlinked factors, where some of those factors avail essential conditions for implementation of CG code while others serve as impediments to the CG process (Adegbite and Nakajima, 2012; Adegbite et al., 2013). Therefore, to understand which factors influence the practice of CG in a country requires a detailed examination of the underlying institutional environment.

The second component of the framework is the “two boxes” to the left-hand side. The two boxes depict various exogenous/foreign forces and endogenous/local influences which drive the practice of Kenya’s CG code. Collectively, they supplement each other and act as important drivers of the CG process. As shown in the ‘top box’, some of the factors which influence the practice of CG in Kenya comprise: (i) regional/common market regulations and (ii) pressures by multilateral organisations i.e. World Bank and IMF (Were et al., 2006; Mwaura, 2007). Notably, these factors induce coercive isomorphic change within the CG process. On the other hand, the ‘box at the bottom’ left-hand side shows the domestically-originating institutional factors (endogenous forces) which influence the practice of Kenya’s CG code. These factors include: (i) local desires to attract foreign capital including foreign shareholders and foreign direct investments (mimetic isomorphism), (ii) averting corporate failures, (iii) professional bodies e.g. accountants’ society (normative isomorphism), and (iv) aligning with global economic order (mimetic isomorphism). As an illustration, policy makers seeking to attract foreign capital try to mimic other developed financial markets, such as through introducing additional regulations which enhance CG practices. Such actions are potentially intended to make local financial markets appealing to international investors, with expectation that they can then bring their capital into the country. Also, policy makers may out of experience introduce new laws, or actively enforce existing regulations with a view to curb repeat of previous corporate failures. Lastly, the presence of professional bodies is found to be a significant endogenous factor which influences the practice of Kenya’s CG code. This is evident where the accountants’ body of Kenya (ICPAK), for instance, demands its members, who are also CG actors, to abide with its professional code of conduct which subsequently boosts the CG process.

The third component is the dotted square in the middle of the framework – with the heading ‘practice of CG’. This part contains five circles, namely: (i) legal and regulatory framework, (ii) board of directors, (iii) ownership rights and shareholder patterns, (iv) stakeholder

relations, (v) financial transparency and disclosure. The five circles are argued in this thesis to be the pillars upon which Kenya's CG code is practiced, as informed by the literature reviewed in this chapter. They are argued to be the mechanism by which the CG code is put into operation. These CG pillars emanate from underlying institutional environment, which also serves as their basis, and are further argued in this thesis to be vulnerable to influences originating from the country's institutional climate. Besides, these pillars – the five circles – are effectuated by various actors including: shareholders, managers, directors, regulators, and other stakeholders such as employees, competitors, and local communities. Therefore, factors which define the actions of various actors involved in the CG process, are argued to have influence on the way Kenya's CG code is practiced. Such factors fall into two major categories, as shown in the two 'boxes' to the left of *figure 2.1* with the following headings: (1) exogenous influences and (2) endogenous influences.

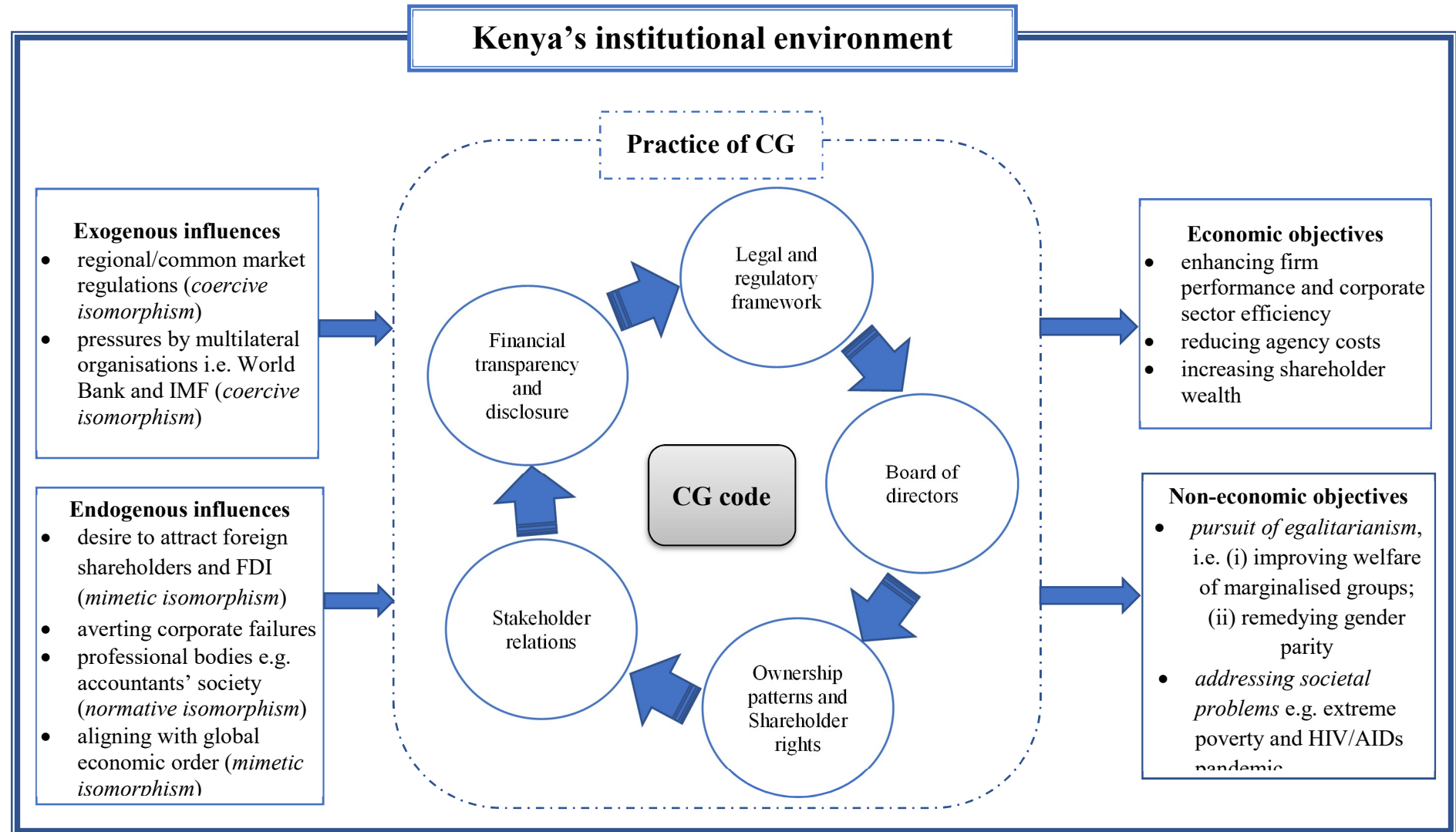
The fourth component is the CG code which is the "little box" surrounded by the five circles. The CG code is assumed to be the centre of the framework, and which forms the basis of all CG activities in a country. The researcher thus argues that to understand the way a CG code is practiced, requires examination of the CG ecosystem from the centre moving outwards.

The fifth component of the framework is the "two boxes" to the right-hand side of the framework, with the headings economic and non-economic objectives. These boxes show how the effectiveness of Kenya's CG code is viewed and assessed. On one hand, is the "top box" with the heading: economic objectives. Evidence examined in this study reveal that Kenya's CG is viewed as a tool for attaining *economic objectives*. Such objectives include reducing agency costs, enhancing transparency for shareholders and regulators, and enhancing overall corporate sector efficiency. On the other hand, as shown in the "bottom box", is non-economic objectives. Evidence analysed in this thesis further show that Kenya's CG code is implemented with a view to achieve various non-economic objectives (e.g. see section 5.4 in this thesis). Such objectives include: (a) pursuit for egalitarianism, such as

balancing and/or improving welfare of marginalised ethnic groups/communities, remedying gender parity, and (b) addressing various societal problems, for example HIV/AIDs pandemic through provision of medical assistance to affected persons, and mitigating poverty through provision of basic amenities (i.e. water, building schools, and cattle dips, and security/police posts). Other non-economic objectives undertaken by firms include environmental restoration through street clean ups and planting of trees. With this understanding, I therefore argue that researchers seeking to investigate practice of CG codes, including the effectiveness of CG codes within LDC contexts, should collect and examine evidence which focusses on these two areas: (i) economic and (ii) non-economic outputs of those codes. Researchers also need to pay attention to the specificity of individual country's socio-economic environment to identify the types of objectives/expected outs emanating from the CG code implemented. This is because different countries are likely to have diverse CG objectives and expectations concerning the effectiveness of their CG codes. This can be due to various considerations such as culture, state of economic development, and maturity levels of their financial markets. In view of this, therefore, no single CG code can be workable in all or most countries. The "ideal" CG code for each country, thus, is one which has been adjusted to simultaneously produce the desired economic and non-economic objectives.

Finally, the proposed framework illustrates that assessing the compatibility of Anglo-American CG code in Kenya, requires: (a) investigating forces which drive the CG process, and (b) examining the objectives sought and/or outcomes resulting from implementation of a CG code. These considerations are examined within the prism of the institutional environment. The two considerations are also found in this study to be the determinants of CG practices within Kenya's corporate sector.

Figure 2.1: Theoretical framework illustrating connection between institutional environment and practice of CG



Source: Developed by researcher



## **2.5 Chapter Conclusion and Summary**

This chapter began by looking at the meaning of CG, where it was found that the concept of CG is commonly viewed as a system for controlling firm operations. However, it also emerged that the three theoretical perspectives adopted in this study have different assumptions regarding the role of CG within firms. Agency theory views CG as mechanisms for guiding shareholder-management relationship. On the other hand, CG is interpreted within stakeholder theory to be a framework for ensuring that management takes into consideration the interests of various stakeholders that have impact on firm survival and continuity. Lastly, the NIS assumes that the meaning of CG, and to a larger extent the role of firm, does not have a static interpretation and depends on the cultural background of the human actors involved in the CG process. Therefore, NIS suggests that various CG actors potentially attach varied meanings to CG depending on their perception about the role of firm in the society. A discussion of the Anglo-American CG framework is also provided in section 2.1, where it was noted that this CG framework is founded on the same principles underlying agency theory.

Accordingly, a detailed review of CG work in Africa and other LDCs is provided in section 2.2. The discussion of literature is divided into five themes, which were found to be the most popular points of departure in previous empirical debates on CG within LDCs. These themes include: (a) legal and regulatory framework, (b) ownership structures and shareholder rights, (c) boards of directors, (d) stakeholders relations, and (e) financial transparency and disclosure. Correspondingly, the five CG themes comprise the six key principles of the international CG framework recommended globally by the OECD. Subsequently, a number of gaps and weaknesses were identified upon the review of literature (see section 2.12.3) with the key gap being the lack of evidence concerning the compatibility of Anglo-American-originated CG code in Kenya.

A theoretical framework comprising of agency theory, stakeholder theory and new institutional sociology (NIS) is also discussed. These three theories were chosen on account of the nature of the research questions, which can only be sufficiently addressed using a multi-theoretical approach. For instance, agency perspective, which is also the dominant theory in CG research, is noted as possessing weaknesses which limit its ability to explain the research problem addressed by this study (see section 2.3.1). To overcome the weaknesses of agency theory, stakeholder theory was adopted to address the narrow focus of the agency perspective. Besides, NIS was incorporated into the theoretical framework in order to capture and explain the reality of Kenya's institutional environment, within which firms operate, and which agency and stakeholder theories are noted as lacking the ability to explain.

Lastly, a discussion of how this study's research questions were developed is provided in section 2.4. As noted, the central research question guiding this research – what factors influence the practice of corporate governance in Kenya? – is intended to investigate the practice of Kenya's CG code with a view to understand the compatibility of its Anglo-American-inspired assumptions with Kenya's institutional environment. Currently, there is no study which examines the applicability of the Anglo-American CG in Kenya despite researchers questioning the practicality of western-originated CG codes within LDCs contexts. To address the research problem effectively, the researcher integrates concepts from the three theories adopted in this thesis and, then, develops a theoretical framework depicting five areas for understanding the practice of CG in Kenya. This framework is shown in section 2.4 above.

## **Chapter 3 – Kenya Country Context**

### **3.0 Introduction**

This chapter presents a discussion concerning the institutional environment of Kenya. It explains the legal framework, socio-cultural background, and state of economic development in Kenya. The discussion further provides explanation concerning the factors and chronology of events, which contributed to the evolution and culmination, respectively, of the present code of CG in Kenya. The basis of this discussion is to provide background understanding concerning the institutional arrangements and reality within Kenya. This is important considering that the thesis's central objective is to examine the way Kenya's CG code is practiced within constraints of the prevailing institutional environment. Understanding Kenya's institutional environment also provides a useful context necessary for making informed interpretations of data analysed in this thesis.

### **3.1 Kenya country background**

#### **3.1.1 Social Context**

Kenya is a developing African country to the east of Africa, with a population of approximately 47 million people. There are forty-three major ethnic tribes with diverse cultures and languages, and religious practices (World Bank, 2014). These ethnic tribes are of varied proportions with the largest tribe – the Kikuyu – constituting about 20 per cent of Kenya's population, while the smallest is less than 1,000 people (Public Service Commission of Kenya, 2014). However, the historical domination of various sectors of the Kenyan economy by a few tribes, including public sector jobs, has virtually turned many of the tribes into spectators resulting in widespread tribal tensions (Gueorguieva, 2012). The Government of Kenya (hereafter 'GoK') has attempted to remedy this problem by enacting equality laws aimed at promoting fair tribal representation within the public sector. This requires all public sector appointments to reflect Kenya's diverse demography (Gueorguieva, 2012). As (Musikali, 2008, p. 12) notes "Kenyans identify more with their tribes than they identify

themselves with being Kenyans [and thus] having a board that represents a tribal bias will lead to the interests of a particular community overriding the interests of the shareholders”. The researcher believes that demographic considerations have a significant impact on CG practices in Kenya as state-owned firms, which also constitute about 20 percent of all listed firms, are required to observe tribal/regional balance. Also, listed firms are required by the Capital Markets Authority to reserve a proportion board positions for women (Capital Markets Authority of Kenya, 2002), majority of whom have been historically marginalised from the formal sector due to lack of formal education and traditional customs (Gueorguieva, 2012, Chege and Sifuna, 2006). It will be interesting to see from this study how such social considerations, i.e. tribal and gender balance, impact on CG practices. The researcher believes that Kenya’s demographic background has significant implications on firm CG processes, including board and other corporate appointments. Perhaps, also, the existing tribal composition of each firm’s leadership may be a determining factor for investors regarding the firms to invest their money in.

Moreover, the powerful concept of tribal identity subjects various CG actors to different traditions, customs and cultural norms, which are potentially conflicting. Lastly, the multiple tribal identities increase sources of coercive isomorphism on firm CG practices, in terms of the various cultural norms and values emanating from the former (e.g. see discussions in sections 5.3 and 5.4).

### **3.1.2 General Macroeconomic Background**

The World Bank categorises Kenya as a low income country, where more than 45 per cent of the population lives below the national poverty line, approximately less than 73 British pence a day (World Bank, 2014). The high level of poverty is further associated with tendency for households to have large families (Kenya National Bureau of Statistics, 2014). In Uganda, Kenya’s neighbour to the west, (Wanyama et al., 2009, p.169) found large households to be a constraint to effective CG. As argued, ‘prosperous’ societal members are

culturally obliged to provide support to their extended families and clans, subsequently predisposing corporate officers towards engaging in corruption and bribery. In addition, low educational levels in Kenya (UNESCO Institute for Statistics, 2007), presents an institutional constraint as some stakeholders within the CG process may be unable to effectively perform their CG roles. For instance, this may be taken to mean that the average investor is unlikely to be sophisticated, or demand high quality corporate information, or even enter into efficient contracts with firm managers (Eisenhardt, 1989). Also, with nearly half of Kenya's population living in extreme poverty, various other socio-economic problems which have an impact on CG are likely to be present. For instance, Ntim and Soobaroyen (2013, p. 475) notes that South Africa's CG code is intended to achieve not just economic objectives such as enhancing corporate sector efficiency and maximising shareholder wealth, but also non-economic objectives like addressing "widespread poverty, high crime rate, and income inequality [partly occasioned] by the long history of apartheid". This, therefore, puts to question the usefulness of an Anglo-American CG code in Kenya, whose underlying objective is the maximisation of shareholder wealth – an economic objective. This thesis further argues that the perception of CG may be different in Kenya. This way, well governed firms are possibly viewed as not only those which post better performance. Firms which assist local communities to have a dignified living through provision of security, water, and other basic needs; may further be viewed as well governed.

Kenya's economy relies mainly on rain-fed agriculture, which exposes the country to economic shocks because of fluctuating weather patterns, and unstable prices in the international commodity markets (World Bank, 2013). This has made Kenya heavily dependent on overseas financial assistance – mainly from the Breton Woods institutions – for poverty mitigation (Mwaura, 2007, Musikali, 2008). The researcher expects Kenya's reliance on IMF and World Bank for financial assistance to be a source of coercive isomorphism, as the country is susceptible to demands of the latter given the powerful

position they occupy over Kenya, as finance providers. Also, given the neoliberal stance guiding the Breton Woods institutions, it is unsurprising that they endorsed an Anglo-American model of CG for Kenya (Were et al., 2006). The emphasis on individual property rights protection accorded by the Anglo-American CG, further serves as an incentive for encouraging savings for investment in capital market; subsequently, boosting economic development within LDCs (Claessens and Yurtoglu, 2013). In this case, Kenyan investors would be potentially incentivised by a good CG environment to own financial assets – such as shares in public companies – thus having ability to earn income, and subsequently curbing the widespread poverty (Meinzen-Dick, 2011).

Notwithstanding, various aspects of Kenya's socio-economic background and macroeconomic environment discussed above, put to question the choice of Anglo-American CG model. This is because the model assumes certain type of investor behaviour (i.e. informed and sophisticated), objective (i.e. focus on maximising shareholders wealth) and institutional context (i.e. robust legal and regulatory environment). Indeed, the evidence analysed in this thesis suggests that many of the features necessary to have a thriving Anglo-American CG code may be absent in Kenya.

### **3.1.3 Legal and Political Environment**

Kenya's legal and political backgrounds resemble greatly those of Britain, the former's colonial power, until 1963, when Kenya attained her independence. Indeed, the first constitution which also laid the foundation of modern day Kenya, was written at Lancaster House, London, with Britain's assistance (Embassy of Kenya-Sweden, 2016). Consequently, Kenya's political system mirrors that of Britain, including a triad form of government comprising: (a) executive, (b) legislature, and (c) judiciary. The latter two are markedly identical on account of the two countries bicameral systems of parliamentary democracy. The two countries also have a shared legal heritage as Kenya's legal framework is founded on the English common law (United Nations Conference on Trade and

Development, 2003). With this understanding, the researcher believes that Kenya has the necessary legal and regulatory infrastructure needed to support the practice of an Anglo-American CG. These include comparable corporate sector regulatory framework comprising of the company statutes, stock market regulator, companies' registry, and Accountants' body. These institutions are similar to those existing in the UK (and other advanced countries like the USA) where the Anglo-American CG model has its origin (Musikali, 2008). Accordingly, it will be interesting to see how the Anglo-American model of CG operates in Kenya, a country with largely similar formal institutions but diverse informal institutional environment, relative to the environment which the same model originated.

## **3.2 Background of Corporate Governance in Kenya**

### **3.2.1 Key events leading to Kenya's CG code**

The discussion in this section is divided into six subsections. The first five subsections explain the key events and factors which defined the emergence of Kenya's CG code. These factors comprise a mix of local and foreign influences, and thus contradict previous studies which suggest that the adoption of CG codes within various LDCs was driven entirely by the Bretton Woods institutions, i.e. *foreign influenced* (see Tsamenyi and Uddin, 2008, Siddiqui, 2010, Haque et al., 2011). Accordingly, and as suggested by Aguilera and Cuervo-Cazurra (2004), the researcher provides separate theoretical explanations for each source of influence. As the ensuing discussion, thus, explains Kenya's CG code is a culmination of joint efforts of international and Kenyan stakeholders. The two sources of influence – endogenous and exogenous stimuli – were virtually intertwined and occasionally occurred during the same time.

The table below highlights of some of the key events which led to the development of Kenya's CG code. These events are discussed in greater detail within the ensuing discussion.

**Table 3.1: Chronology of events leading to the current CG code (CMA 2002 code)**

<b>Timeline</b>	<b>Event</b>
Early 1980s: 1980-84	First phase (economic) reforms introduced by the IMF and World Bank – the initiation of privatisation process
1984	Joint study by the International Finance Corporation (IFC) and the Central Bank of Kenya recommended the creation of a regulatory body for the capital markets in Kenya
1985-1991	Second phase (economic) reforms spearheaded by the World Bank and IMF – establishment of Capital Markets Authority and formalisation of NSE
June 1986	Funding agreement signed between the Government of Kenya (GoK) and donors (USAID) to establish a capital market development authority
November 1989	Kenyan parliament passes a bill to set up the Capital Markets Authority of Kenya (CMA) through an act of parliament (Cap 485A, Laws of Kenya)
January 1990	Capital Markets Authority of Kenya (CMA) constituted
March 1990	Capital Markets Authority of Kenya (CMA) inaugurated
1991	Nairobi Securities Exchange was formalised through registration as a private company limited by shares
1991-1996	Third generation economic reforms spearheaded by World Bank and IMF
1997	Commonwealth (secretariat) held 3-day workshop on how to improve performance of companies in Kampala, Uganda
November 1998	First corporate governance workshop in Kenya organised by NSE, CMA, ICPAK, ACCA
March-August 1999	Private Sector Corporate Governance Trust reviews various international codes of CG to develop the sample Kenyan code
October 1999	PSCGT organised a CG workshop/seminar sponsored by the Ford Foundation, British Department for International Development, and Friedrich Ebert Foundation
November 1999	PSCGT sample code adopted, published and distributed
January 2002	Formation of Kenya Shareholders' Association
April 2002	Formal adoption of Kenya's current CG code

*Source:* Collated by researcher from various sources (The Office of Economic and Institutional Reform, 1994, Gatamah, 2002b, Were et al., 2006, CMA website, 2015, NSE website, 2015, Private Sector Initiative for Corporate Governance, 1999, Capital Markets Authority of Kenya, 2002)



### ***3.2.1.1 First phase of economic reforms: Early to mid-1980s***

The emergence process of Kenya's CG code began in the 1980s following severe economic problems which compelled the then cash-strapped Government of Kenya (GoK), to seek financial aid from overseas donors, including the World Bank and IMF. This provided an opportune moment for the Bretton Woods institutions to propagate economic reforms in an effort to 'correct' Kenya's previous economic policies, which were thought to have significantly contributed to the fiscal difficulties experienced in the country (Were et al., 2006). This was also viewed as a good opportunity to harmonise Kenya's economic strategy with the prevailing international (neoliberal) economic order (Levi-Faur, 2005). In this regard, the World Bank and IMF suggested various preconditions within the Structural Adjustment Programs (SAPs) which the GoK was required to meet before any financial assistance could be advanced to the country (Were et al., 2006).

These donors initiated SAPs contained various reforms at different levels and magnitudes, and were implemented in phases. These reforms elicited considerable tension between the donor community and Kenya's bureaucracy, as well as the media and the wider citizenry. Perhaps what made it even more complex was the fact that GoK was in extreme urgency for funds to rescue an ailing economy, while the Bretton Woods institutions appeared not to consider that as a top priority until Kenya implemented the reforms as part of SAP (Rono, 2002, Were et al., 2006). This only worsened the already tense relations between Kenya and the donors. Moreover, the IMF and World Bank wielded considerable power over GoK because other donors used these organisations as a benchmark for advancing loans and other aid packages, where the latter would also withhold their grants when the Bretton Woods institutions were dissatisfied with GoK's progress (Akumu, 2000).

However, when an already apprehensive Kenya realised that the donors were unlikely to release much needed money and without alternative sources of funds, the GoK conceded to the SAPs (Were et al., 2006, Mwaura, 2007). Were et al. (2006, p.52) refer to this as the

“carrot-and-stick approach” of the Bretton Woods institutions towards instigating reform process. One of the areas identified for reforms by the Bretton Woods institutions was the poorly performing public sector. Ikiara (2005), cited in Were et al. (2006, p.25) observes that as many as 250 government-owned inefficient commercial firms were “draining the national budget” (Were et al., 2006, p.25). Accordingly, the IMF and World Bank mandated the GoK to privatise a number of the state-owned companies in order to improve their performance (The Office of Economic and Institutional Reform, 1994, Mkandawire and Soludo, 2003, Mwaura, 2007). In addition to expanding the financial markets, privatisation of state-owned companies was expected to mobilise financial resources for GoK from the sale of shares in those companies (Rono, 2002). According to Cuervo and Villalonga (2000) privatisation also has CG implications as it results into changes within the ownership structures of divested firms from wholly government-ownership into private-ownership. As Cuervo and Villalonga (2000) further observes, there is also a need to have functioning capital market in order for private investors to be able to take control of their investments including mechanisms such as “market for managers, [...] and corporate control, [...] reward systems and the board of directors”. As discussed later in this section however, Kenya did not have a capital market at the beginning of the privatisation process and it was therefore imperative to establish one, as well as formulate CG structures to guide firms CG practices along with the market’s operations. This would also allow private investors to be able safeguard their interests in the privatised firms (Cuervo and Villalonga, 2000).

It was during this first phase of the reforms that concerns arose regarding the fate of the would-be privatised firms, which the donor community feared may be unable to disentangle themselves from the same problems which previously constrained their efficiency. These problems mainly manifested in form of misappropriation of funds, political patronage and clientelism, tribalism and ethnic-based staffing (Were et al., 2006, Rono, 2002). At this point, the Bretton Woods institutions considered introducing CG regulations so as to prevent

the poor CG practices witnessed within government-owned enterprises from finding their way into the private sector. According to Lima (2001), cited in Aguilera et al. (2012, p. 22) a similar privatisation process in Brazil was followed by the introduction of a corporate regulatory framework addressing: “(a) [the new] separation between ownership and control, (b) dispute resolutions, (c) calling of shareholder’s meetings, (d) composition of board of directors, regulation of independent auditors, and (f) regulations on insiders’ information and trading”. This is consistent with (aguilera et al., 2013, p.2), argument that fundamental economic reforms such as privatisation reforms are usually accompanied by an establishment of regulatory framework to ‘ensure executives respect the rights and interests of [the newly-privatised companies’ shareholders]. Up until this point, the most significant influence driving reforms within the corporate sector emanated from overseas multilateral bodies. Finally, whilst the Kenyan CG code was not realised during this initial phase of economic reforms, or even the second phase discussed below, these developments highlighted the need to start thinking about CG in Kenya.

#### ***3.2.1.2 Second phase economic reforms: Mid-1980s to early-1990s***

In 1984, the International Finance Corporation (IFC) and the Central Bank of Kenya (CBK) conducted a joint study with a view to exploring ways in which financial markets in Kenya could be strengthened and their competitiveness enhanced. This study recommended establishment of a regulatory body to supervise and develop the capital markets in Kenya (International Finance Corporation and the Central Bank of Kenya, 1984). The GoK incorporated this study’s recommendations in its policy formulation, and which were later reflected in its “Sessional paper no. 1 of 1986 on Economic Management for Renewed Growth” (The Office of Economic and Institutional Reform, 1994).

In addition, the USAID<sup>17</sup> provided an additional technical and financial assistance intended to help in establishing Kenya's capital markets body through a grant plan called the Structural Adjustment Assistance Program-Technical Assistance Project (SAAPTAP). USAID notes in a September 1994 report titled: "Kenya: Evaluation of Capital Markets Authority", that the SAAPTAP had a "Capital Markets Authority component". The total costs borne by USAID alone in the establishment of the CMA amounted to \$775,000 (The Office of Economic and Institutional Reform, 1994, p. 'a'). Indeed, USAID further notes in the same 1994 report that:

*...Capital markets did not really exist in Kenya before the initiation of the [project]. There was neither a Securities Act nor a regulatory agency; the Nairobi Stock Exchange was a private association/club whose six members of long standing did not trade among themselves and it could not be termed a 'stock market' in the accepted sense of that term. There was also no clearing/settlement [systems] ... (The Office of Economic and Institutional Reform, 1994, p. 'a').*

Accordingly, this assistance enabled the GoK to form the Capital Markets Development Advisory Council, in November 1988, which then drafted a bill for consideration by parliament in forming the Capital Markets Authority of Kenya (CMA). This bill was eventually passed, through an Act of parliament in November 1989 (Cap 485A, Laws of Kenya), and the CMA was founded in January 1990 and later launched in March 1990 (The Office of Economic and Institutional Reform, 1994, p. 'a', CMA website, 2015).

Around the same time, the Nairobi Securities Exchange<sup>18</sup> (NSE) was formally registered in 1991 as a private company limited by shares. The NSE website states that:

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<sup>17</sup> USAID stands for 'United States Agency for International Development'.

<sup>18</sup> Nairobi Securities Exchange was previously known as the 'Nairobi Stock Exchange' until July 2011.

*...Share trading [was] moved from being conducted over a cup of tea, to the floor based open outcry system... (NSE website, 2015).*

These developments, establishment of a stock exchange (NSE) and capital market regulatory authority (CMA), constitute the other major strides in the evolutionary process of CG within Kenya. NSE and CMA would later play a leading role in the drafting of a code of CG practices in Kenya as explained in the latter discussion of this section. In this regard, the privatisation process discussed in subsection 3.2.1.1 above also required a trading platform where private investors could buy and sell securities. This entry of many market participants into the NSE certainly also warranted a regulatory framework including a regulatory body to oversee the financial markets operations. This view is consistent with (Cuervo and Villalonga, 2000), (Smith and Trebilcock, 2001), (Aguilera, 2005), and (Levi-Faur, 2005) arguments that the presence of a market regulator is important to ensure the success of privatisation reforms. However, the effectiveness of regulatory agencies in the CG implementation process within LDCs has been questioned in literature (Ntongho, 2009). This issue is explored in greater detail in section 5.1 of the next chapter.

Moreover, the establishment of NSE allowed wider participation in share trading by both domestic as well as foreign investors, with the latter helping to further promote CG in Kenya. This provided an opportunity for GoK to access funds for spurring economic growth through FDI inflows. However, this could only be sustained by making the country's investment climate attractive in order to keep the foreign capital providers. Accordingly, it is also likely that foreign investors, who brought their savings to the Nairobi Securities Exchange (NSE) upon formalisation, may have come in with expectations concerning some level of 'good' CG practices, perhaps comparable to their home countries or some other investment destinations which they previously invested in. According to (Aguilera et al., 2011) and (Aguilera et al., 2012), entry of international investors is associated with growing CG expectations concerning how domestic firms should enhance shareholder value, board

independence and disclosure standards. Majority of foreign investors are also large institutional investors (Aguilera et al., 2011). Agency theory suggests that such large shareholders monitor management within firms in which they invest in, thereby helping to reduce agency problems (La Porta et al., 2000, Shleifer and Vishny, 1997). NSE also contributed greatly to the CG discussions which resulted in the first (unofficial) CG code in Kenya, from which the official Kenyan code was later derived.

### ***3.2.1.3 Experiences from banking sector failures***

Besides the contribution of international bodies to the formation of Kenya's capital market infrastructure<sup>19</sup>, other undesirable occurrences within the domestic scene further compelled GoK to act. In the late 1980s, Kenya's economy had seriously deteriorated and the banking system was facing an imminent failure. By 1989, two commercial banks and numerous non-bank financial institutions ceased operations while many other banks faced financial distress. This period, the mid-to-late 1980s, is denoted in literature as Kenya's first phase of banking crisis (Brownbridge, 1998). Notwithstanding, the next phase of banking failures in the early-to-mid 1990s was the biggest and costliest as noted by (Brownbridge, 2002, p.177):

*“...A further 5 local banks and 10 non-bank financial institutions were taken over by the [CBK] in 1993/4, with 2 more local banks in 1996...”*

Consequently, it is estimated that the Kenyan economy lost about 10.2 billion shillings (approximately £62.9 million in 2017 exchange rate terms). This loss was estimated to be around 3.2% of Kenya's 1993 GDP (Economist Intelligence Unit, 2002, cited in Brownbridge, 2002, p. 179). Evidence suggests that these bank failures were caused by widespread insider lending (where banks advanced huge loans to insiders without sufficient collateral), excessive government ownership, and interference from politicians who were not

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<sup>19</sup> The two institutions created with the assistance of donors include: (i) NSE as an institution for capital mobilisation, and (ii) CMA as an institution for regulating capital market operations in Kenya.

only shareholders but also active directors (Brownbridge, 2002, Were et al., 2006). This sequence of undesirable events inspired a need to develop a regulatory framework, which would not only safeguard against future bank collapses but also promote investor confidence in the local corporate sector. Aguilera and Cuervo-Cazurra (2004) argue that inefficiencies within a country's corporate sector, such the CG problems previously witnessed within government-owned companies, can provide impetus for CG stakeholders to develop a code of CG practices. It is therefore unsurprising that GoK relaxed its previous hard-line stance towards reforms proposed by the donor community. This is considering that it was at that point faced with a failing banking system, on top of an ailing corporate sector and a poorly performing economy altogether. (Tolbert and Zucker, 1983) drawing from institutional theory noted that US states which encountered problems such as corruption and poor public service delivery were more eager to embrace civil service reforms, compared to those states which did not experience these problems. Insights from institutional theory also suggest that organisations, including the state, tend to develop new regulations and policies when they encounter challenges (Tolbert and Zucker, 1996).

#### ***3.2.1.4 Third phase of economic reforms and deliberations amongst various CG stakeholders***

The problems which prevailed within Kenya's corporate sector, including bank collapses and inefficient state-owned companies which were being privatised, demonstrated the consequences of poor CG practices. These occurrences had potential to discourage foreign investors from investing in Kenya. Notwithstanding, Kenya needed to attract foreign capital to boost her poorly performing economy considering the then inadequate supply of domestic savings. Consequently, the formulation of a code of CG practices to make Kenya attractive to foreign capital providers was highly imperative. Drafting a CG code may also have proved an easier option, as it was just one-off activity, compared to the series of reforms prescribed by Bretton Woods Institutions in order to be granted financial assistance. This is keeping in

mind that GoK needed funds, and hence an institutional reform like CG code would enhance the attractiveness of Kenya's investment climate consequently leading to capital inflows (Mwaura, 2007, Were et al., 2006).

It is possible that the severity of capital shortage in Kenya, then, could have made the government susceptible to external influences. In this sense, GoK could have rushed to embrace any CG code that was fronted by various entities without due consideration of the practicality of such code. Similarly, the UN in a future report criticised the approach taken specifically by the IMF in the latter's work within LDCs noting that:

*"...there [had] been an intensification of IMF surveillance and conditionality as a result of their extension to financial sector issues in debtor countries, [but] in accordance with the diagnosis, this is where the main problem [was]...new codes and standards [were] likely to result in enhanced conditionality, particularly for the use of new facilities...[it is likely there was] unnecessary interference with the proper jurisdiction of [...] sovereign government[s]...there is also the potential problem that the type of measures and institutions promoted may not be the appropriate ones.." (UNCTAD, 2001, p.70-71).*

Another report by ActionAid, also faulted IMF's work in Kenya noting that:

*"...policy space of developing countries was constricted as IMF increased its [...] conditionalities...The countries which failed to implement the conditionalities were subject to severe fiscal discipline and these threats to poor countries amounted to blackmail; that poor nations had no choice but to comply...This [...] works to the IMF advantage as they are able to continue arm twisting the developing countries as most of the negotiations are done when a country is in a desperate situation."*  
(ActionAid International Kenya, 2009).



Whilst the Bretton Woods institutions and other supranational organisations such as OECD have played important role in “helping [LDCs] to improve their CG practices” (Aguilera and Cuervo-Cazurra, 2009, p.385), these agencies have been have been criticised for using the ‘wrong’ strategies in promoting CG within recipient countries (e.g. Tsamenyi and Uddin, 2008, Wanyama et al., 2009, Siddiqui, 2010). For instance, (Haque et al., 2011) observes that the World Bank introduced a code of CG practices in Bangladesh, which faced considerable resistance from various stakeholders thus weakening its effectiveness. The failure by World Bank to consider the peculiarities of Bangladesh’s institutional context including familial-shareholders, and lack of clear boundary between politics and business, was one of the causes of inapplicability of the CG code (Haque et al., 2011). Lack of consultation with local stakeholders is the other argument advanced concerning why, a World Bank prescribed, CG code in Bangladesh failed to achieve the desired effect (Haque et al., 2011).

Despite a weakening economy and increasing pressure from the donor community to carry out reforms, it was not until 1997 when foundation for the current Kenyan CG code was laid. Already, GoK was heavily cash-strained and its relations with donors, particularly the IMF and World Bank, were anything but pleasant. A Commonwealth Secretariat meeting held in Edinburgh, Scotland, committed to encourage member countries to begin focussing on improving CG practices within their economies, in order to promote economic development. A statement in the Commonwealth CG code, sums up the Edinburgh resolution as follows:

*“Capacity should be established in all Commonwealth countries to create or reinforce institutions to promote best practice in [CG]; in particular, codes of good practice establishing standards of behaviour in the public and private sector should be agreed to secure greater transparency, and to reduce corruption.”*

(Commonwealth Business Forum Resolution, October 1997, endorsed by the Edinburgh Commonwealth Economic Declaration, cited in the CACG<sup>20</sup> CG code).

Unlike other multilateral bodies such as the World Bank and IMF, the approach utilised by the Commonwealth Secretariat was non-coercive. Its effort brought together various stakeholders, both state actors and other non-state interest groups, an approach which enhanced the acceptance of CG locally. This outcome is consistent with (Bunea and Thomson, 2015) observation that engaging relevant stakeholders in debate during the development of new policies and regulations, by either national or international policymakers, greatly enhances the acceptance of those proposals. Therefore, the approach adopted by the Commonwealth organisation in inviting different CG stakeholders/ interest groups to Kenya's CG deliberation process, may have been a strategy for minimising dissenting attitudes towards the CG development process. (Tolbert and Zucker, 1983) also noted that civil service reforms in the USA were embraced faster in states which had little objection from interest groups, compared to those where interested groups posed stiff opposition. (Tolbert and Zucker, 1983) thus argued that coercion alone is insufficient in guaranteeing the acceptance of new regulations. Indeed, the Commonwealth Secretariat's inclusive approach to CG development is recognised in the PSCGT CG code's preamble as follows:

*...in November 1998, a workshop on the Role of Non-Executive Directors was held [in] Nairobi...this seminar was sponsored and supported by organisations with specific interest in CG such as NSE, CMA, ICPAK<sup>21</sup>, ACCA<sup>22</sup>(Kenya chapter) with*

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<sup>20</sup> CACG is a short form for 'Commonwealth Association for Corporate Governance'.

<sup>21</sup> ICPAK is an abbreviation for the 'Institute of Certified Public Accountants of Kenya'.

<sup>22</sup> ACCA is an abbreviation for the 'Association of Chartered Certified Accountants'.

*participation drawn from leading corporate organisations...the organisers had no idea it would develop in a major initiative on CG... (PSCGT<sup>23</sup> CG code)*

By the end of 1998, major strides had been made in Kenya towards drafting the country's first code of CG. Already, there was a lot of support accorded into the process by numerous local stakeholders comprising the CMA, NSE, professional bodies, corporate organisations along with several individuals, and scholars. The donor community on the other hand availed the necessary assistance required to support the CG development process. This included providing finance to cover the expenses of various CG workshops and seminars held in Kenya during that time. Donors also paid travel expenses of international speakers, mainly drawn from the UK, invited to educate local stakeholders on the importance of good CG practices within firms (Gatamah, 2002a).

It is interesting to observe that despite the severity of CG challenges previously witnessed in the country, besides donor-pressures to adopt capital market reforms (see subsections 3.2.1.1 and 3.2.1.3 above), it was not until the late 1990s when Kenya appears to have embraced the idea of drafting a code of CG practices. Notably, however, there appears to have been wider participation during this time by various stakeholders including the donor community, GoK through CMA, NSE, professional associations, academics, and the business community. This was different from previous occasions where only the GoK and the donor community were involved. It is possible the involvement of more stakeholders/interest groups in the search for Kenya's code of CG practices, may have raised the profile of the CG development process locally. According to (Klapper and Love, 2004) the support of interest groups, including politicians, is critical in CG initiatives such as this one which was taking place in Kenya. Institutional theory insights suggest that the success of innovations and other structural changes within an institutional environment, require an

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<sup>23</sup> PSCGT stands for 'Private Sector Corporate Governance Trust'.

‘ideological consensus and harmonious working relations’ amongst various interested and/or affected groups such as ‘legislatures, publics, regulatory agencies and professional associations (Rowan, 1982, p. 259-260).

The CG development process had now gained momentum, following wider acceptance by various interest groups and with availability of funding. Several CG forums and workshops were thus organised and continued to yield fruitful deliberations, which led to among other things the formation of an interim committee in March 1999 (PSCGT CG code). Subsequently, this interim committee was registered as a *trust* – the Private Sector Corporate Governance Trust (PSCGT). Its work comprised reviewing various international CG codes, including the UK and the OECD, and the commonwealth CG codes, to facilitate the process of drafting a code of CG practices for Kenya (Gatamah, 2002a). Within 6 months of its establishment, the PSCGT completed writing a draft CG code for Kenya and “*distributed it to over four hundred corporate organisations, development agencies, embassies and government departments*” (PSCGT code, 1999, pp iii). This committee, the PSCGT, comprised of representatives of various interest groups some of which were also funding its operations. It is for this reason that PSCGT distributed the draft CG code to its various stakeholders eliciting feedback and commentary, and perhaps, also, as a strategy for enhancing legitimacy of the CG code.

It is however important to note that the PSCGT code was a private initiative which did not have any legal backing, nor enforceability of any form. Indeed, the code’s preamble states that “*it [was] intended to assist companies to develop their own governance codes and [was] neither prescriptive nor mandatory*” (Private Sector Initiative for Corporate Governance, 1999, p. 11). According to (Aguilera and Cuervo-Cazurra, 2009), the ‘nature of the issuer’ is significant in determining the success of a CG code, not to mention its content as well as enforceability. These writers argue that CG codes written by investors/investor associations are weaker – such as the PSCGT code in the case of Kenya during this time. This is because

without legal backing, private codes can only be sanctioned through ‘activism in shareholder meetings’ (Aguilera and Cuervo-Cazurra, 2009). (Aguilera and Cuervo-Cazurra, 2009) argue that only CG codes endorsed by government or stock exchange are potentially feasible, as firms can be penalised for non-compliance. This is consistent with NIS insights regarding *coercive isomorphism* where by market regulators impose restraints, and also compel firms to conform to those regulations, subsequently resulting in similarity of behaviour and/or structures across an industry (DiMaggio and Powell, 1983). In this regard, the fact that the first CG code in Kenya – PSCGT code – originated from the private sector suggests that there was still a need to have a formal code of CG.

Another noteworthy consideration is (Gatamah, 2002a) presentation in an OECD CG forum, where the author remarked that PSCGT code was “*deliberately drafted to excite and incite debate on good CG in Kenya, [and] facilitate ownership*”. This discussant noted that the CG development process in Kenya was full of suspicion and that CG still lacked acceptance by the general Kenyan public, as captured in his presentation:

*...[there is] fear that good CG practices are an imposition by the donor community to facilitate enhanced dominance of the market by the foreign community or the notion that good CG standards are introduced to facilitate rent seeking by foreigners in the process of liberalisation and privatisation... (Gatamah, 2002a, p. 50-51).*

The above remark explains why initial attempts to set up a corporate regulatory framework during the privatisation process, involving state-owned companies, may have encountered stiff resistance in Kenya. Resistance to privatisation was also exacerbated by fears that foreigners stood to benefit more from the privatisation reforms at the expense of the locals. This is unsurprising since there was a widely-held fear locally, that foreign powers had initiated the privatisation process with the intention of capturing the ‘juicy’ sectors of Kenya’s economy (Ariyo and Jerome, 1999, p. 212) . Similarly, (Smith and Trebilcock, 2001, p.238) state that the flow of foreign capital within LDCs ‘is often perceived as a neo-

colonialist threat’. On reflection, it is surprising that the concept of CG was still viewed with suspicion by the Kenyan public, despite the active involvement of interest groups and other local stakeholders during the CG development process. Moreover, formulation of the initial code of CG was the work of private lobby group, suggesting a likelihood that there was no coercion during the CG development process. Perhaps the introduction of CG in Kenya was viewed as an idea hatched by the Bretton woods institutions, and only being fulfilled by local stakeholders. Indeed, Kenya is the only country in Africa where serious CG debate originated informally from within the private sector as opposed to formal sources such as *government* (e.g. Malawi, Mauritius, Nigeria and Tanzania) or the *institute of directors* (e.g. Ghana, South Africa, Uganda, Zambia and Zimbabwe) (Ntongho, 2009).

Nevertheless, an equally noteworthy aspect of the CG development process in Kenya was the substantial amount of money used to finance its various activities. Table 3.2 below provides details of costs incurred during Kenya’s CG development process.

**Table 3.2: Funding support in the CG development process**

Activity	Amount Utilised
First CG workshop (November 1998)	\$20 000
Second CG seminar (March 1999)	\$22 000
Setting up the initial committee, and drafting the PSCGT code	\$36 000
Third major CG seminar (October 1999)	\$39 000
Publication and distribution of PSCGT code (10, 000 copies)	\$25 000
Establishing a coordinating secretariat (March 2000)	\$62 000
<b>Sub-total (excluding PSCGT’s subsequent annual budgets)</b>	<b>\$204 000</b>
Annual budget for the PSCGT	\$450 000

*Source:* Adapted from Gatamah (2002, p.62-63)

It seems unlikely that the then financially distressed GoK would have been able to provide funding towards the CG consultations and drafting process, without the generous assistance accorded by donors. That notwithstanding, reliance on donor support may have availed financiers of the process – the Bretton Woods institutions, the commonwealth organisation, and other donors – with considerable influence in the CG development process. This

suggests a change of approach by the donor community, from the initially coercive approach employed by Bretton Woods institutions, which also encountered considerable resistance from local actors (Were et al., 2006). The PSCGT CG code of 1999 explains that Kenya's CG development process relied fully on goodwill from donors (Gatamah, 2002a, Private Sector Initiative for Corporate Governance, 1999).

### ***3.2.1.5 The culmination of an official code of CG in Kenya***

After publication of the private sector (PSCGT) CG code, CMA took immense interest in it and formed a technical committee which was tasked with drafting an official CG code for Kenya. By this time, the costs of not having a CG code were clearly evident, at both local and international scenes. On an international level, serious CG problems had resulted in the failure of corporations such as Enron, WorldCom etc. Locally, some big listed-firms were on the brink of failure due to poor CG practices including misappropriation of resources by their controlling shareholders. One such example of a local firm facing serious CG challenge was *Uchumi* supermarket chain, which was previously wholly-owned by the GoK before its privatisation (Musikali, 2008). The CMA thus desired to have an official CG code which would help to prevent the future occurrence of such problems within Kenya's corporate sector.

Accordingly, CMA's technical committee finally delivered a code of CG practices for Kenya. As noted in the preamble of Kenya's CG code, its drafters drew inspiration principally from the UK's Combined Code, OECD and Commonwealth CG codes (all Anglo-American-styled CG models), and also borrowed heavily from the PSCGT code (see CMA (Capital Markets Authority of Kenya, 2002, pp. 472). This is consistent with (Aguilera and Cuervo-Cazurra, 2009) observation that supranational bodies such as OECD and the Commonwealth Secretariat, have played a significant role in guiding LDCs, such as Kenya on this occasion, in their development of CG codes. Nevertheless, this raises question concerning whether LDCs do attempt to customise such codes to fit with the peculiarities of

their institutional environments, and thus benefit from the codes' intentions (e.g. see Adu-Amoah et al., 2008, Siddiqui, 2010, Wanyama et al., 2009). This issue is examined in detail in chapter 5 of this thesis, where the researcher analyses data concerning compatibility of Kenya's (Anglo-American-inspired) CG code within her potentially diverse institutional environment. On reflection, there are different reasons why Kenya's CG code may have been designed along the Anglo-American governance model, including perceived suitability with Kenya's common law orientation (La Porta et al., 2000), and closeness to neo-liberal economic order advocated by the Bretton woods institutions (Reed, 2002b). It is also likely that Kenya was trying to mimic the then prevailing dominant global economic order (Reed, 2002b), in order to enhance the credibility of her financial markets (Zattoni and Cuomo, 2008). NIS insights suggest that, when faced with uncertainty, organisations attempt to model their structures through imitation, to resemble those of their presupposed ideal situations (DiMaggio and Powell, 1983). This phenomenon is referred to as mimesis, or mimetic isomorphism, within institutional theory (DiMaggio and Powell, 1983, Greenwood et al., 2008).

The present code of CG practices for Kenya was officially adopted by the CMA in April 2002 (Capital Markets Authority of Kenya, 2002). It also recognises the contribution of the Private Sector Corporate Governance Trust group (PSCGT) in Kenya's CG process, which inspired the development of the current code of CG practices in Kenya:

*...[CMA] has supported the development of a code of best practice for CG in Kenya issued by the PSCGT, whose efforts have also been useful in the development of these guidelines and are supplementary thereto... (Capital Markets Authority of Kenya, 2002)*

Notably, however, despite similarities in the two CG codes – PSCGT code issued in 1999 and CMA code issued in 2002 – the privately issued PSCGT code was unable to curb the poor CG practices which were then confronting Kenya's corporate sector. The PSCGT code,



which was issued by a private body, lacked any legal backing, compared to the CMA code issued by the capital market regulator and hence enforceable. This suggests that the effectiveness of a CG code may be dependent on the nature of entity issuing it. In light of this observation, CMA may have felt a need to have a formal CG code which was obligatory for firms; thus, useful in minimising non-compliance of CG code's provisions particularly by the listed firms. Also, the supervisory body would be better positioned to regulate firm CG practices and take decisive actions when firms deviate from expected CG behaviour (Aguilera and Cuervo-Cazurra, 2009). In this regard, CMA would be able to exert regulatory pressure on the listed firms to comply with the CG code. This argument is consistent with NIS prediction of *coercive isomorphism* which states that organisations tend to exhibit identical behaviour when subjected to the same set of constraints, such as laws and regulations, which includes the formal CG code in this case (DiMaggio and Powell, 1983).

Finally, the CMA technical committee's draft CG code was made official under the Capital Markets Act (Cap. 485A, Laws of Kenya), through a Kenyan government gazette notice no. 3362 of January 9<sup>th</sup>, 2002. The code was later launched on January 25<sup>th</sup> 2002, where a leading local daily reported: "*Stiff New Rules For Companies*" (Akumu, 2002). This CG code is officially titled, "*Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya*" (Capital Markets Authority of Kenya, 2002). This Kenyan CG code is reviewed in greater detail in section 3.2.

### **3.2.1.6 Summary of section 3.2.1**

This section – 3.2.1 – provides a chronological analysis of the development of Kenya's CG code. Evidence drawn from archival data (including policy papers by international organisations such as the Commonwealth, IFC, IMF, OECD, USAID, and the World Bank; GoK's policy and regulatory publications; academic publications; and mass media) and interviewee accounts, indicate that the development process of Kenya's CG code was stimulated by various factors and events which occurred in five main phases. They include:

(a) first stage of economic reforms in the early to mid-1980s; (b) second stage of economic reforms during the mid-1980s to early-1990s; (c) experiences from banking sector failures; (d) third stage of economic reforms and interest groups participation; (e) the drafting of the CG code. Moreover, the process of development of Kenya's CG code is found to have involved efforts of both international and Kenyan stakeholders.

The analysis presented in this section established that the need for a CG code in Kenya was conceptualised in the early-to-mid-1980s, during first stage of economic reforms – the structural adjustment programs (SAPs) – which were advocated by the Bretton woods institutions. At that time, Kenya faced serious economic challenges including severe capital shortage which compelled GoK to approach the IMF and World Bank for financial assistance. Nevertheless, the Bretton Woods institutions responded by firstly recommending market-oriented policy reforms, before financial assistance could be agreed. Among the preconditions outlined by the Bretton woods institutions was a need to privatise a number of state-owned corporations which were depleting government resources. Accordingly, a need to establish a corporate regulatory framework, including a stock exchange market and a capital market regulatory body which were previously absent, was identified. The envisaged regulatory framework would among other things promote investors rights, and confidence within a nascent capital market and stock exchange, upon privatisation of the state-owned corporations. The analysis suggests that this was imperative given that the privatisation process was to result in separation of ownership and control of the privatised (state) firms. Consequently, there was a need to establish a code of CG practices to govern operations within those firms including how to conduct shareholders meetings, promote accountability and also safeguard minority shareholders rights.

In the second stage, mid-to-late 1980s, two additional organisations – IFC and USAID – became involved in facilitating regulatory developments within Kenya's capital markets. The IFC conducted a joint study together with the CBK with a view to establish ways of

expanding Kenya's capital markets, as well as developing an adequate regulatory capacity to oversee the same. This was an important step in readiness for the privatisation process of the identified government-owned companies. The findings from the IFC/CBK study were later adopted by GoK and developed into policy. On the other hand, the USAID provided technical and financial assistance which enabled the GoK to implement recommendations from the IFC/CBK study, including funds for setting up a capital markets regulatory body – the CMA. This was followed by the registration of the Nairobi stock exchange. At the end of this second stage, crucial institutions which were previously absent in Kenya, notwithstanding their underlying importance for good CG practices within a country, were established – the NSE and CMA. Along with aiding in the privatisation process recommended in the SAPs, as well as providing platform for domestic investors to participate in the same, the establishment of the NSE also opened the Kenyan capital markets to foreign investors' whose entry is observed to have enhanced the CG development process in Kenya. With the separation of ownership resulting from the privatisation process, the entry of foreign investors potentially offered enhanced monitoring of executives behaviour thus bolstering the CG process. Moreover, the formation of CMA marked another effort towards CG development in Kenya, since this agency began active supervision of market operations in Kenya in order to safeguard good CG practices. The CMA later issued Kenya's formal CG code.

Subsection 3.2.1.3 provides explanation regarding how further problems within Kenya's banking sector influenced the development of the CG code. Within a decade since mid-1980s, nine banks and various non-bank financial institutions collapsed in Kenya, an occurrence which further exacerbated capital crisis in the country. Notwithstanding, Kenya's economy had become increasingly weakened due to shortage of capital which began in the early 1980s. These banking failures were mainly attributed to poor CG practices including excessive insider lending without sufficient collateral, heavy government ownership of

banks which resulted to inefficiencies, and political interference where many politicians owned shares and also served as directors within banks making it difficult to separate ownership from control. All these problems happened despite dual regulation by the industry regulator (CBK), as well as the capital markets regulator (CMA) for the listed banks. The CG problems experienced within the banking industry elicited concerns to improve the CG regulatory framework within the industry and the corporate sector in general. After these experiences, more stakeholders – both domestic and foreign individuals and organisations, besides the Bretton Woods institutions and the GoK – became actively involved in CG deliberations thus heightening the momentum of the CG development process in Kenya.

The discussion in subsection 3.2.1.4 show that GoK's relations with the Bretton Woods institutions had severely deteriorated by the mid-1990s due to conflict of interests. GoK was in extreme need for funds, whilst the Bretton Woods institutions insisted on economic reforms which would not only take time to implement, hence delaying the disbursement of money. Conversely, GoK feared that the radical reforms would cost it political support at a time when the country was readying for general elections. This divergence of interests only heightened tensions between the two parties. However, in 1997<sup>24</sup> the analysis finds evidence of change in strategy by the donor community from coercion which was previously employed by the Bretton woods institutions, into persuasion – a method which gained the cooperation of GoK and other local interest groups. This began when the Commonwealth Secretariat invited officials of the NSE and representatives of Kenyan professional bodies – ICPAK, ICPSK, ACCA (Kenya Chapter) – to a CG conference in Uganda. Afterwards, the conference attendees formed a private association to advance CG development in Kenya,

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<sup>24</sup> Kenya also held her general elections in the last quarter of 1997, the second national elections after introduction of multiparty democracy which was also recommended by the Bretton Woods institutions under their earlier proposed political reforms.

including the drafting of a CG code. This association continued to organise CG meetings and workshops in Kenya whilst relying on donors for financial support. The funding fully covered various expenses including: fees for hiring conference venues, stationery materials, as well as costs of inviting international speakers mainly drawn from the UK. After several meetings and deliberations, the private association (PSCGT) drafted the first CG code, which was nonetheless unenforceable as it was not legislated by the Kenyan government. One notable observation about the drafting of the PSCGT's CG code is that the process utilised significant amounts of money, which was unaffordable for GoK as it was still heavily cash-strapped. Finally, CMA, Kenya's capital markets regulator endorsed the private sector CG code and went ahead to form a committee which was mandated to formulate an official code of CG practices, which would be enforced by GoK for Kenyan listed firms. The CMA committee finally adapted the private sector CG code to arrive at the present (official) Kenyan CG code.

### **3.2.2 Comparison between the Kenyan CG code and unified codes in use then elsewhere in the world**

The discussion below provides a comparative analysis of Kenya's CG code (the CMA code of 2002) with the UK's combined code of 2000. Whilst the Kenyan CG has remained unchanged, the UK combined code has undergone various revisions in the years 2003, 2006, 2008, 2010, 2012, and 2014 (European Corporate Governance Institute, 2002). However, the present Kenyan CG code has not undergone revisions since its inception in 2002. Two possible explanations for this phenomenon are discussed below.

Firstly, the fact that the Kenyan CG has not been updated suggests that GoK adopted a formal CG code perhaps to improve credibility of Kenya's capital markets with a view to attract foreign investors. In this case, Kenya may have viewed the adoption of a CG code (which aligns with the Anglo-American governance model) as pathway to align itself with dominant neo-liberal economic order. According to (Zattoni and Cuomo, 2008), some countries adopt CG merely for credibility/legitimation reasons as opposed to efficiency purposes, that is,

such countries embrace CG primarily to enhance the credibility of their markets globally relative to intent of improving domestic CG practices and associated firm performance. This is also consistent with NIS insights regarding mimetic isomorphism that organisations try to imitate the structures of their presumed successful peers with the aim of gaining legitimacy (DiMaggio and Powell, 1983). The researcher, nevertheless, cannot rule out possibility that efficiency desires may have played a key role in the adoption of (formal) CG code. This is considering earlier observations that Kenya had experienced severe CG problems during the period leading to the introduction of the CG code (see discussion in section 3.2.1 above). This observation is consistent with (Aguilera and Cuervo-Cazurra, 2004) observation that adoption of CG codes by countries is usually a product of two complementary factors – efficiency and legitimacy reasons.

The other reason why Kenya's CG code may not have been revised since its inception could be because her capital market is still small, compared to a developed economy such as the UK. For instance, Kenya has only 61 listed companies (Nairobi Securities Exchange Website, 2015), compared to UK's 2,400 listed firms (London Stock Exchange Website, 2015). According to (Aguilera and Cuervo-Cazurra, 2009, p. 386), "countries with more sophisticated capital markets require codes with more advanced recommendations, while countries with simpler capital markets are likely to require codes that tackle more basic issues". This can be deduced from agency theory's prediction that agency problems are likely to exacerbate with increase in the number of principals and agents, where the presence of more self-interested agents/managers would necessitate increased monitoring to minimise agency costs and information asymmetries (Eisenhardt, 1989, Fama, 1980, Fama and Jensen, 1983, Jensen and Meckling, 1976, Shleifer and Vishny, 1997). Accordingly, this might explain why UK may have made several revisions of its CG code whereas Kenya has not made a single revision.

Nevertheless, the researcher questions the effectiveness of Kenya's CG code given that it has never been revised since its inception over a decade ago. This is an interesting point to consider, in understanding whether the continuous implementation<sup>25</sup> of the current CG code in Kenya continues to improve CG practices, or may be just paying lip service. The researcher assumes that a more effective CG code would be one which is reviewed and updated periodically, so as to enhance its effectiveness. This assumption is informed by (Aguilera and Cuervo-Cazurra, 2009) observation that CG problems change continuously as new CG issues, thus necessitating constant revisions of CG codes to address the new occurrences.

The ensuing analysis below compares the provisions of Kenya CG code with the UK combined code of 2000. Whilst other CG codes such as the Commonwealth CG guidelines of 1999, and the OECD code of 1999 are identified as similarly having inspired the development of Kenya's CG code (see Capital Markets Authority of Kenya, 2002, p.472), they are not included in this discussion as they are just general guidelines/codes and not focussed on a specific country. The discussion below thus compares the UK and Kenya's CG codes which focus on specific country/institutional settings, i.e. UK and Kenya respectively. Furthermore, the decision by Kenya to design her CG code based on the UK combined code of 2000, as well as those of supranational bodies such as the commonwealth and OECD, is unsurprising as these organisations also facilitated the development process of Kenya's CG code, including the UK government through DFID<sup>26</sup> (see discussion in

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<sup>25</sup> A detailed discussion of how the Kenyan CG code has been implemented is provided in chapter 5 of this thesis.

<sup>26</sup> DFID stands for The Department for International Development, a department of the UK government which focusses on poverty eradication in developing countries (see <https://www.gov.uk/government/organisations/departments-for-international-development> ).

section 3.2.1 above). This facilitation included both technical as well as material assistance. This is consistent with (Aguilera and Cuervo-Cazurra, 2009) observation that supranational bodies, such as OECD among others, assisted many LDCs to develop their own CG codes. Consequently, the comparative review of both the Kenyan CG code and the UK combined code of 2000, allows a deeper understanding concerning the extent to which the former resembles the Anglo-American governance model. Table 3 below illustrates how selected provisions of both the Kenyan CG code and UK's combined code compare with each other.

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Insert table 3.3 about here

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Some of the key provisions within the Kenyan CG code concern the way boards of Kenyan listed firms should be constituted and function. Such provisions relating to the board of directors recommend how firms should: (a) structure their board of directors (*principle 2.1.1*); (b) remunerate the directors (*principle 2.1.2*); (c) provide the board with sufficient information (*principle 2.1.3*); (d) ensure board balance (*principle 2.1.4*); (e) make board appointments (*principle 2.1.5*); and (f) undertake the re-election of directors (*principle 2.1.7*). Consistent with the UK CG code, as well as the Anglo-American governance model, the Kenyan CG code advocates for a unitary board arrangement consisting of a mix of executive/inside and non-executive/outside directors. This is a distinct characteristic of the Anglo-American model of CG (Weimer and Pape, 1999, Reed, 2002b). Also, see further discussion about characteristics of the Anglo-American model in Chapter 2, section 2.1.2). Consistent with agency theory prediction, the presence of non-executive directors is assumed to enhance the capability of the board to monitor managerial actions thus minimising agency problems such as information asymmetry (Shapiro, 2005). In addition, both CG codes recommend that the roles of the chief executive and board chair be performed by separate



individuals (see discussion in Chapter 2, section 2.1.2). Another noticeable similarity between the Kenyan CG code and the UK combined code of 2000 is the recommendation for directors' remuneration to be linked to performance. This is founded on agency theory's assumption that linking senior corporate officers' compensation to performance, such as, through bonuses and commissions, helps to align the interests of managers with those of the shareholders (Shapiro, 2005).

Accordingly, another consistency of the Kenyan CG code with the UK combined code of 2000 is evident where they both identify shareholders as the most significant firm stakeholders. Both codes stipulate that shareholders should have the ultimate say in all major firm activities, including aspects such as mergers and acquisitions, takeovers, including managerial incentives and directors' remuneration. This shareholder-oriented approach to CG is a central feature of Anglo-American CG (see discussion in Chapter 2, section 2.1.2), and is founded on agency theory's premise that shareholders as firm owners, should have the ultimate control within a firm as they bear the greatest (residual) risk in the event of firm failure (Heath, 2009).

Moreover, the two codes – Kenya's CG code of 2002 and UK's combined code of 2000 – similarly emphasise the roles of internal control and external audit in effecting good CG practices. In this regard, the internal control function and external audit ideally minimises information asymmetry, since shareholders have access to relatively accurate information regarding the conduct of firm managers. This is also consistent with agency theory's suggestion that shareholders can minimise agency problems by incurring some monitoring costs to ensure that managers run the firm in the former's best interests (Shapiro, 2005).

An equally significant similarity between the UK's combined code of 2000 and the present Kenyan CG code is their 'principles-based approach' to CG implementation which orients towards self-regulation and minimal regulatory intervention. This is a distinct characteristic of the UK's CG code whereby firms are allowed the flexibility of choosing the CG

provisions to comply with, provided that sufficient explanation is given where firms deviate from recommendations of the CG code (Arjoon, 2006, Cadbury, 1992). This flexibility is aimed at preventing mere compliance with the CG code, possibly viewed by firms as a regulatory obligation, and instead encourage meaningful implementation of the CG code's recommendations (Cadbury, 1992).

Table 3 (attached at the end of this section) outlines the provisions of Kenya's CG code, and compares each provision with similar recommendations of the UK's combined code. It is important to emphasise that besides the apparent similarity of intent, Kenya's CG code contains various recommendations which also match the provisions of the UK combined code of 2000. This includes occasional replication of the latter's verbatim. This thus puts to question whether Kenya's CG code was adapted to the local institutional environment, within which it is practiced. The researcher is cognisant that CG codes of different countries may share "some key universal principles for effective CG" (Aguilera and Cuervo-Cazurra, 2009, p.377), however, the resemblance between the wordings in the provisions of both the Kenyan and UK CG codes suggests that UK's combined code may have had considerable influence, or, may have been favoured in the development of Kenya's CG code of 2002. This is keeping in mind that UK's code was written before Kenya's, that is, 2000 and 2002 respectively. Notwithstanding, CG codes from developed countries, such as the UK's combined code, are observed in literature as having influenced the development of various LDCs CG codes (Wanyama et al., 2009, Tsamenyi and Uddin, 2008, Siddiqui, 2010). In this thesis, the applicability of the latter codes is investigated – using the case of Kenya – given that countries would be expected to adopt CG codes that focus on addressing their distinctive CG problems (Aguilera and Cuervo-Cazurra, 2009, Adegbite and Nakajima, 2012, Adegbite et al., 2013). Consistent with (Charkham, 1994, cited in Adegbite and Nakajima, 2012, p.84) argument "foreign systems of corporate governance reflect their history, assumptions, and value systems.". This consequently suggests that an Anglo-American-originated CG model

is not likely to be effective for addressing CG challenges prevailing in LDC contexts, such as Kenya.

Accordingly, (Ow-Yong and Kooi Guan, 2000) performed a comparative analysis of UK's combined code and Malaysia's CG code, and established that the latter's recommendations resembled those contained in the former. Nevertheless, they noted that UK combined code's recommendations were better suited for the UK CG environment compared to that of Malaysia. According to (Ow-Yong and Kooi Guan, 2000), UK listed firms tend to have clear separation between 'ownership and control', whilst majority of listed firms in Malaysia lack clear separation of ownership and control due to the presence of large controlling shareholders. Consequently, applying CG provisions originating from the UK, which were incorporated within Malaysia's CG code, makes it unfeasible to promote a robust CG environment within Malaysia's corporate sector. This is because UK's CG provisions cannot address fully the peculiar CG problems prevailing in Malaysia's institutional environment (Ow-Yong and Kooi Guan, 2000). Consistent with this view, the discussion in chapter 5 provides an in-depth analysis concerning the practicality of Kenya's CG code within the constraints of the country's institutional environment.

Moreover, another explanation for the resemblance between the UK's and Kenyan CG codes appears to be because of their shared history, where Kenya was colonised for sixty-eight years by Britain until attaining her independence in 1963. As a result of this colonial heritage, Kenya's legal framework is founded on that of the UK. Indeed and besides sharing the (English) common law system (La Porta et al., 2000), the wider Kenyan corporate regulatory framework is also modelled along the UK's corporate framework (Musikali, 2008, p.2). This is expected considering that the concept of modern businesses, including public corporations, did not exist in traditional Kenyan societies; prior to British rule. Even after introduction of corporate form (public) organisations, indigenous Kenyans mainly worked

in those corporations as wage-earners and very few served as managers (National Christian Council of Kenya, 1968). According to (National Christian Council of Kenya, 1968, p.214):

*“African participation in directorships, top management, and shareholding in the major foreign (and local) companies in Kenya [was] small. Very few Africans were directors of more than one or two companies...African participation was minimal”*  
(National Christian Council of Kenya, 1968, p.260).

The same study also found that “very few companies were in African hands then ”(National Christian Council of Kenya, 1968, p.214).

Furthermore, Kenya did not have a formal stock exchange where the public could trade shares for another 28 years (since independence) until 1991 when the country established the Nairobi Securities Exchange (see discussion in section 3.2.1.2 above). Until then, majority of the large (public) corporations were owned and controlled by GoK as state-owned enterprises, and whose ownership assumed a complex agency relationship. According to (Cuervo and Villalonga, 2000, p.582) government ownership of firms assumes a two-stage agency relationship starting with “public (as owners) and politicians as appointees of the public [principals and agents respectively], politicians then appoint managers of state-owned firms [principals and agents respectively]”. This was the dominant form of public corporate ownership in Kenya before privatisation of state-owned enterprises, and formalisation of the Nairobi stock exchange market; besides the privately-held companies. This type of agency relationship also deviates from the mainstream concept of agency relationship espoused by agency theory (Fama, 1980, Jensen and Meckling, 1976, Shleifer and Vishny, 1997). Thus, (Cuervo and Villalonga, 2000, p.582) argue that various mechanisms suggested by agency theory such as “(labour) markets for managers, and market for corporate control, [as well as] reward systems and managerial participation in ownership, and board of directors” do not hold in the case of state-owned company. This may be interpreted as a potential explanation as to why Kenya lacked a code of CG practices prior

to (i) privatisation of state-owned companies and (ii) the establishment of Nairobi stock exchange. Lastly, it is also likely that Kenya's decision to adopt most of the recommendations of the UK CG code may have been driven by the country's lack of experience relating to the operations of capital markets, as well as corporate form of (public) organisations. This may have thus compelled the country to model her capital markets along those of her colonial power – Britain. This is consistent with NIS insights regarding *mimetic isomorphism*, which suggests that organisations seeking to establish their structures endeavour to model themselves along other older or successful organisations (DiMaggio and Powell, 1983). This behaviour, also called *mimesis*, is particularly evident when such organisations are faced with uncertainty from unpredictable or little understood institutional environments (DiMaggio and Powell, 1983). Mimesis, as a source of institutional change, is also argued in literature to be partially responsible for the diffusion of Anglo-American governance across several countries (Aguilera and Cuervo-Cazurra, 2004). Consequently, this potentially explains the similarity observed between the UK combined code and Kenya's CG code.

### ***3.2.2.1 Summary of section 5.2***

The above discussion reveals some important observations. Firstly, the analysis finds a close resemblance between the recommendations of the Kenyan CG code compared with the UK combined code. This similarity is unsurprising considering a number of factors, including: (a) the active role played by UK government agencies in facilitating the drafting of the current Kenyan CG code; (b) the Kenyan legal system including various company ordinances such as the Companies Act, are founded on the English common law system; and (c) Kenya was also previously colonised by Britain. The similarity of Kenya's CG code with UK combined code therefore appears to be a deliberate action emanating from the strong colonial links between the two countries. Kenya's decision to utilise the UK combined code as a reference point while developing her own CG code also demonstrates an imitative

behaviour by the former. This finding is consistent with NIS assumption of mimetic isomorphism concerning the manner in which entities make deliberate decisions to model their structures in line with those of other ideal entities. Kenya, an LDC, may have also attempted to model her CG code in line with UK's combined code in an attempt to raise the legitimacy of her capital markets, and subsequently attract much needed foreign capital.

However, the analysis also shows a contradiction with NIS prediction regarding manifestation of mimetic isomorphism. While NIS assumes that entities choose to model themselves in line with other successful ones, it is debatable why, then, Kenya's CG has remained unchanged since it was drafted while that of the UK has undergone many revisions during the same period. Kenya's CG code has remained unchanged since it was formalised in 2002 whilst the UK CG code has undergone various revisions in the years 2003, 2006, 2008, 2010, 2012, including the current UK combined code of 2014. Possible interpretations for this may include lack of resources to carry out CG amendments, uncertainties about how to design the new CG code, or impact of the new code on Kenya's capital markets. If indeed, Kenya made a deliberate choice to model her CG framework, and generally capital market operations, in line with UK's arrangements, it would be expected that Kenya's CG code could have been amended around the same periods the UK CG code underwent revisions. A possible explanation concerning why Kenya's CG code has not undergone revisions since its inception, over a decade ago, may be because the country formally adopted CG after experiencing serious capital shortages for two decades. Evidence shows that GoK was in serious need of capital which predisposed the country to adopt an official CG code in order to attract foreign capital to supplement her inadequate domestic savings; as well as, circumvent the seemingly unpopular demands of the Bretton woods institutions. Therefore, the decision to adopt a code of CG practices may have been primarily driven by efforts to enhance the credibility of Kenya's capital markets, and thus the current CG code was adopted to pay lip service relative to improving efficiency of Kenya's corporate sector.

Conversely, another possible explanation originating from the analysis suggests that the Kenyan CG code may not have undergone revisions because Kenya's capital markets are small relative to the UK's, with fewer developments to warrant revisions of the Kenyan CG code. In this regard, it is likely that the present code of CG practices in Kenya may be sufficient to tackle the existing CG problems given the rudimentary nature of Kenya's capital markets. This is however questionable noting that various challenges continue to confront the efficiency and operations within the Kenyan corporate sector.

Moreover, the choice of a shareholder-centred CG code may be interpreted as an attempt to reassure (potential) investors, possibly international investors, that they would retain ultimate control over their investments, whilst their funds remained within Kenyan firms. This is consistent with agency theory's view that shareholders as residual claimants in a firm, occupy a vulnerable position, and therefore should retain control over firm affairs including ability to appoint managers, and approving major firm decisions.

Finally, this section provides a comparative analysis of the present Kenyan CG code and the UK's combined code of 2000. The objective of this section is to examine similarities between the Kenyan CG code and unified CG codes in use elsewhere in the world, with a view to understanding how such codes may have influenced the development of the Kenyan CG code. Whilst three CG codes – UK's combined code of 2000, the Commonwealth CG guidelines of 1999, and OECD CG principles of 1999 – are identified as having shaped the drafting of the present Kenyan CG code, the analysis focuses on the UK combined code of 2000. The decision to discuss the UK combined code of 2000 alone, instead of all three CG codes, was made on the basis that only this code relates to a specific country context, the UK; whilst the other two are generic codes with no particular reference to any single context – developed or developing country. Also, the discussion focuses on the UK's combined code of 2000 which existed during the drafting of the current Kenyan CG code which was formalised in 2002.

**Table 3.3: Comparison of key provisions of Kenya's CG code (2002) with the UK Combined Code of 2000**

Provision	Kenya and UK CG codes' recommendations
Board of directors	<ul style="list-style-type: none"> <li>• <i>“Every public listed company should be headed by an effective board to offer strategic guidance, lead and control the company and be accountable to its shareholders”</i> (Principle 2.1, Kenya’s CG code, 2002).</li> <li>• <i>“Every listed company should be headed by an effective board which should lead and control the company”</i> (Principle A.1, UK’s combined code of 2000).</li> </ul>
CEO/Chair duality	<ul style="list-style-type: none"> <li>• <i>“There should be a clear separation of the role and responsibilities of the chairman and chief executive, which will ensure a balance of power of authority and provide for checks and balances such that no one individual has unfettered powers of decision making. Where such roles are combined a rationale for the same should be disclosed to the shareholders in the annual report of the Company”</i> (Provision 2.2.1, Kenya’s CG code, 2002).</li> <li>• <i>There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision”</i> (Provision A.2, UK’s combined code of 2000).</li> </ul>
Directors remuneration	<ul style="list-style-type: none"> <li>• <i>“The directors’ remuneration should be sufficient to attract and retain directors to run the company effectively and should be approved by shareholders”</i> (principle 2.1.2, Kenya’s CG code, 2002).</li> <li>• <i>“Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully...”</i> (Principle B.1, UK’s combined code of 2000).</li> <li>• <i>“The executive directors’ remuneration should be competitively structured and linked to performance”</i> (principle 2.1.2, Kenya’s CG code, 2002).</li> <li>• <i>“A proportion of executive directors’ remuneration should be structured so as to link executive rewards to corporate and individual performance”</i> (Principle B.1, UK’s combined code of 2000).</li> </ul>



Supply and disclosure of information	<ul style="list-style-type: none"> <li>• <i>“The board should be supplied with relevant, accurate and timely information to enable the board discharge its duties” (principle 2.1.3, Kenya’s CG code, 2002).</i></li> <li>• <i>“The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties” (Principle A.4, UK’s combined code of 2000).</i></li> </ul>
	<ul style="list-style-type: none"> <li>• <i>“Every board should annually disclose in its annual report, its policies for remuneration including incentives for the board and senior management...” (Principle 2.1.3, Kenya’s CG code, 2002).</i></li> <li>• <i>“The company’s annual report should contain a statement of remuneration policy and details of the remuneration of each director” (Principle B.3, UK’s combined code of 2000).</i></li> </ul>
Board balance	<ul style="list-style-type: none"> <li>• <i>“The board should compose of a balance of executive directors and non-executive directors (including at least one third independent and non-executive directors) of diverse skills or expertise in order to ensure that no individual or small group of individuals can dominate the boards’ decision-making processes” (principle 2.1.4, Kenya’s CG code, 2002).</i></li> <li>• <i>“The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board’s decision taking” (principle A.3, UK’s combined code of 2000).</i></li> </ul>
Board appointments	<ul style="list-style-type: none"> <li>• <i>There should be a formal and transparent procedure in the appointment of directors to the board and all persons offering themselves for appointment, as directors should disclose any potential area of conflict that may undermine their position or service as director” (Principle 2.1.5, Kenya’s CG code, 2002).</i></li> <li>• <i>“There should be a formal and transparent procedure for the appointment of new directors to the board” (Principle A.5, UK’s combined code of 2000).</i></li> </ul>

Directors re-election	<ul style="list-style-type: none"> <li>• <i>“All directors except the managing director should be required to submit themselves for re-election at regular intervals or at least every three years”</i> (Principle 2.1.7, Kenya’s CG code, 2002).</li> <li>• <i>“All directors should be required to submit themselves for re-election at regular intervals and at least every three years”</i> (Principle A.6, UK’s combined code of 2000).</li> </ul>
Shareholders	<ul style="list-style-type: none"> <li>• <i>“There should be shareholders participation in major decisions of the Company. The board should therefore provide the shareholders with information on matters that include but are not limited to major disposal of the Company’s assets, restructuring, takeovers, mergers, acquisitions or reorganization”</i> (Principle 2.3.1, Kenya’s CG code, 2002).</li> <li>• <i>“Shareholders should be invited specifically to approve all new long-term incentive schemes...”</i> (Provision B.3.4, UK’s combined code of 2000).</li> </ul>
Annual reports and accounts	<ul style="list-style-type: none"> <li>• <i>“The board should present an objective and understandable assessment of the Company’s operating position and prospects. The board should ensure that accounts are presented in line with IAS3”</i> (principle 2.4.1, Kenya’s CG code, 2002).</li> <li>• <i>“The board should present a balanced and understandable assessment of the company’s position and prospects”</i> (Principle D.1, UK’s combined code of 2000).</li> </ul>
Internal control	<ul style="list-style-type: none"> <li>• <i>“The board should maintain a sound system of internal control to safeguard the shareholders investments and assets”</i> (Principle 2.4.2, Kenya’s CG code, 2002).</li> <li>• <i>“The board should maintain a sound system of internal control to safeguard shareholders’ investment and the company’s assets”</i> (Principle D.2, UK’s combined code of 2000).</li> </ul>
External auditors	<ul style="list-style-type: none"> <li>• <i>“The board should establish a formal and transparent arrangement for maintaining a professional interaction with the Company’s auditors”</i> (Principle 2.4.4, Kenya’s CG code, 2002).</li> <li>• <i>“The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors”</i> (Principle D.3).</li> </ul>

Relationship with auditors	<ul style="list-style-type: none"> <li>• <i>“The board should establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each annual general meeting”</i> (Principle 2.4.3, Kenya’s CG code, 2002).</li> <li>• <i>“The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company’s auditors”</i> (Principle D.3, UK’s combined code of 2000).</li> </ul>
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Source: Kenya’s CG code, 2002 and UK’s combined code of 2000

### **3.2.3 Statutes underpinning CG**

Kenya's corporate regulatory framework is embedded on the English common law (Musikali, 2008). The Kenyan Companies Act (Chapter 486, Laws of Kenya), for instance, is a derivative of the UK Companies Act of 1948, and constitutes the main company statute which governs activities of all registered companies operating in Kenya. This includes basis upon which companies should prepare their financial accounts and communicate such information to their shareholders and other stakeholders (Barako et al., 2006). For listed firms, the Companies Act is further supplemented by other regulations including the CMA Act of 2002, and the NSE listing rules. Moreover, additional regulations intended to enhance firm CG practices are enforced by specific industry regulators such as the CBK and IRA for banks and insurance firms respectively (Musikali, 2008, Amuguni et al., 2010). The researcher expects these laws – the company statutes enforced by the Companies Registry; listing rules by NSE, and the banking and insurance industries regulations enforced by CBK and IRA respectively – to be a source of coercive isomorphic change for Kenyan listed firms (North, 1991, DiMaggio and Powell, 1983, Powell and DiMaggio, 1991). Accordingly, the presence of these institutions is expected to result in a robust CG environment as they supplement the CG code; thereby, eliminating differences between the intended objectives of the Kenyan CG code and actual CG practices.

Finally, ICPAK, a body established under the Accountants Act (Chapter 531, Laws of Kenya) regulates the professions of accountancy and auditing. Besides, ICPAK provides the framework for financial reporting, and also governs the conduct of accountants and auditors through its professional code of conduct (Barako et al., 2006). Consistent with NIS theory utilised in this thesis, the researcher expects Kenya's accountancy body to propagate normative behaviour – professionalism and aversion to corruption – amongst its members (accountants and auditors) working within firms (DiMaggio and Powell, 1983, Powell and DiMaggio, 1991). Theoretically, ICPAK supports the implementation of Kenya's CG code

and is, therefore, a source of normative isomorphism. ICPAK enhances transparency and disclosure of firms' affairs, consequently minimising information asymmetry between agents and the principals. However, the researcher argues that the ability of ICPAK to exert normative change within Kenya's CG landscape, will be dependent upon various factors such as professionalism of accounting and auditing professionals in Kenya, and extent of adoption of international accounting standards.

### **3.3 Chapter Conclusion and Summary**

The discussion in this chapter has explained the reality of Kenya's institutional environment. It begins by describing the social, economic and legal context of the country. The social context suggests a dynamic cultural background constituting various sub-cultures and value systems. The economic context reveals a market economy that is developing, and faced with various challenges including rampant corruption and bribery, and high income inequality. However, the legal and political context of Kenya resembles to a large extent that of the UK – Kenya's past colonial power. Accordingly, Kenya's country context comprises both similarities and differences with western countries such as USA and UK, where the CG code implemented in Kenya originated. The diverse nature of Kenya's country context suggests that the institutional environment is also likely to be dynamic. This therefore presents an interesting setting for examining practice of Kenya's CG code, including how various aspects of the institutional environment influence perceptions and actions of various CG actors. Different aspects of the institutional environment are likely to impact one CG actor or group of actors differently from other actors/group of actors, thus resulting in varied experiences and interpretations of the CG process. Considering these observations, a subjectivist ontological perspective, and subsequently qualitative methodology, is the most appropriate approach for examining the practice of CG in Kenya. Finally, a detailed explanation regarding the suitability of qualitative methodology in this thesis is provided in the next chapter.

## **Chapter 4 – Methodology: Access, Data Collection and Analysis**

### **4.0 Introduction**

This study has argued in chapters 1 and 2 about emerging evidence within literature which suggests that the imposition of western-originated CG codes within LDCs, non-western settings, potentially leads to incompatibility of those codes with the latter's institutional environment. Therefore, the CG codes emanating from advanced countries encounter tensions within LDCs context thereby affecting their effectiveness. Moreover, the discussion in the preceding chapters, cautions against supposing that western-originated CG codes achieve the same level of effectiveness seen in their countries of origin. That is to mean that two countries with different institutional environments, say, an advanced country and an LDC, that have adopted similar CG code may realise different outcomes due to institutional differences which impact the practice of their CG codes. Accordingly, this thesis argues that it is erroneous to assume western-inspired CG codes are easily applicable within non-western contexts.

Similarly, the literature critiqued shows existence of discrepancies between the CG codes and actual CG practices in various LDCs. This study therefore aims to examine the applicability of Kenya's CG code within the country's prevailing institutional reality, and further explores the factors which influence the manner in which the same CG code is practiced. To fulfil this objective, this chapter – research methodology – explains the choice of research methods used, and steps followed in collecting and analysing the data for purposes of answering the study's research questions. The chapter begins by discussing the choice of methods adopted in this study, as well as a justification of the same. The second section explains how appropriate data for answering this study's research questions was identified, together with how the study's sample was selected. The third section provides a discussion of the methods which were adopted in analysing the data collected. The fourth section outlines the sampling strategy that was followed in this study. The fifth section

discusses the suitability of the data collection methods selected. The sixth section explains the ethical framework guiding the conduct of this research, alongside an overview of the ethical decisions considered during the research process. Section seven reflects on the limitations faced while conducting this research, together with adjustments which were made by the author on account of those limitations. Finally, the eighth section provides a summary of the methodology chapter.

## **4.1 Research Approach and Rationale**

Social science research is principally grounded around two methodological traditions – qualitative and quantitative methodologies – which define how writers identify and gather appropriate data, along with the method(s) of analysing that data to address a research questions sufficiently. However, each of these traditions is further underpinned by competing philosophical foundations, which determine the considerations to be accounted for by a researcher, in selecting a suitable methodological approach. These research philosophies comprise *ontology* and *epistemology* in that successive order (Bryman and Bell, 2007, Easterby-Smith et al., 2008).

### **4.1.1 Ontology**

Ontology in social science refers to researchers' view about the nature of reality, that is, the phenomena under investigation. There are fundamentally two mutually exclusive ontological perspectives, which form the basis of social science inquiry: (a) objectivism, and (b) subjectivism. *Objectivism* as an ontological perspective is the philosophical assumption that reality or phenomena exists independently and externally to the researcher and the research population. Conversely, *subjectivism* is an ontological standpoint which assumes that reality or phenomenon being researched is neither external nor detached from social actors or the researcher. Instead, subjectivism views reality as emergent and socially constructed, through the opinions of multiple social actors depending on their lived experiences (Bryman and Bell, 2007).

In view of the understanding above, a subjective ontological position fitted with the nature of research questions outlined in chapter one of this study. This is importantly so because the line of inquiry adopted in this study explores the actions of various CG actors, whose behaviour is best understood by immersing oneself into their own world. Besides, CG outcomes are argued to be dependent on CG actors both within and outside of firms, and whose actions are embedded within their social context (Dalton et al., 2007, Cuevas-Rodríguez et al., 2012, Wiseman et al., 2012). Consequently, CG phenomena such as the one investigated through this study's research questions, is likely to have multiple interpretations depending on the meanings constructed by the various CG actors. Similarly, it is likely that different organisational actors have different implications for CG process depending on factors such as social status, or power to control resource flows (Mitchell et al., 1997). Consequently, the flexibility accompanying subjectivism potentially offers the researcher the ability to understand how various actors engage with CG reality, through their potentially diverse views and experiences.

#### **4.1.2 Epistemology**

Epistemology refers to the philosophical perspective which assists a researcher in making appropriate decisions regarding how to examine the form of reality earlier established. In this manner, epistemology constitutes the logic of investigating phenomena including the techniques to use in collecting information, and the methods to follow in interpreting that data. There are broadly three epistemological paradigms in social science research: (a) positivism, (b) realism, and (c) interpretivism (Bryman and Bell, 2007, Easterby-Smith et al., 2008).

*Positivism* is fundamentally grounded within the realm of natural sciences, and ontologically aligned with the objectivist perspective. To avoid contaminating the phenomena, positivism calls for researchers to isolate themselves from reality being examined, and move beyond human opinions into the facts underlying such phenomena. The data collected is usually



numerical in nature as opposed to textual data, and also involves large representative samples since such studies seek to generalise their findings to other contexts. Accordingly, the results of positivist studies are usually aimed at testing theories in addition to determining cause and effect relationships between aspects of phenomena (Easterby-Smith et al., 2008).

*Realism* on the other hand is viewed as a mid-point between positivism and constructionism, where it offers a rather flexible approach for studying social reality while still grounded within an objectivist ontological position. In this manner, researchers are given an opportunity to purposively choose appropriate data for explaining an externally positioned reality, whilst largely enjoying the rigor associated with positivist studies. But, unlike positivist studies which seek to explain causation, realist studies are mainly interested in understanding correlations between different attributes of phenomena. Also, the realist perspective permits for generalisation of findings in other contexts even when the sampling procedure may have been non-probabilistic (Bryman and Bell, 2007, Easterby-Smith et al., 2008). A major flaw of this epistemological stance, nonetheless, is its inability to capture cultural and institutional factors in researching (Easterby-Smith et al., 2008), thus rendering it incompatible with objectives of this study to understand how institutional factors affect the practice of Kenya's CG code.

The third epistemological stance, and an antithesis to positivism, *interpretivism* provides a dynamic approach for engaging with largely mutable phenomena. Interpretivism is founded on the subjectivist ontological position and postulates that, unlike the more rigid natural science facts, social phenomena involves a complex range of issues. As an instance, humans create culture which defines their behaviour, and in turn human actions affect culture. For this reason, social reality remains an emergent phenomenon which is continually formed amongst diverse social actors. Based on this logic, interpretivism seeks to gain an in-depth understanding of human actions, where researchers immerse themselves within the phenomena under investigation, in an attempt to gain first-hand accounts about the

experiences of social actors. In this way, researchers get an opportunity to view the world ‘through the eyes’ of the actual social actors (Bryman and Bell, 2007, Easterby-Smith et al., 2008).

With the above understanding, concerning the different epistemological positions on which social science research is grounded, the researcher considered the interpretivist perspective to be the most suitable approach for guiding the execution of this study. In this regard, the following considerations were weighed against the three epistemologies before settling for the interpretivist paradigm. To begin with, it was established after review of literature that majority of extant CG research has predominantly assumed a positivistic standpoint; where very little investigation has been conducted using alternative epistemological paradigms. Accordingly, the researcher previously found no evidence of CG studies in Kenya following an interpretivist approach, a research gap that is also a motivation for this research. Additionally, adopting an interpretivist standpoint permitted the researcher to contribute to CG theory by bringing in a fresh methodological perspective. Notwithstanding the sacrifice for generalisability of this study’s findings, interpretivism permitted the researcher to delve deeper into the CG phenomena thus gaining a detailed understanding of the research topic. This further enabled the researcher to circumvent the challenge of ‘mixed findings’ or ‘treating CG as a black-box’, usually associated with positivistic studies (McNulty et al., 2013, Zattoni et al., 2013).

Accordingly, the nature of the central research question guiding this inquiry, a “how” question, intends to understand the manner in which CG is practiced in Kenya. To address this research question effectively, it was important to observe and/or listen to interviewee accounts concerning the way they in which they put the provisions of Kenya’s CG code into practice within the prevailing institutional environment. In connection with this, semi-structured interviews offered a suitable way of collecting data owing to their open-ended nature, in addition to the further benefit of triangulation provided by the documentary data

in validating the researcher's interpretation of interviewees' views. Finally, an interpretivist epistemology fitted with this research more aptly over other epistemological stances (i.e. positivism and relativism) by way of gaining a detailed understanding concerning the practice of CG in Kenya based on the views of actual CG actors (Creswell, 2003).

## **4.2 Research Design**

This study adopted a qualitative multiple methods research to answer the research questions guiding this study. This decision was informed by recent calls for more qualitative research in CG scholarship, arguing that prior studies have yielded mixed results therefore calling on writers to focus on real-life experiences of CG actors, in order to make a meaningful contribution to theory. To overcome shortcomings of agency theory I decided to use new institutional sociology (NIS) as the dominant perspective in this study (McNulty et al., 2013, Zattoni et al., 2013). NIS seeks to understand through a *social constructivist* approach, how organisational processes are shaped by their social environment; hence, the choice of qualitative methodology (Hall and Taylor, 1996). A detailed explanation of why this philosophical stance – social constructivism – is the most appropriate for guiding this study's inquiry is provided in section 3.1 below.

Accordingly, pertinent documents were initially reviewed to assist the researcher in identifying the type of the interview questions to prepare for the second phase of data collection – the semi-structured interviewing process. This permitted the researcher to build a robust interview framework to gain rich insights about the phenomena, consequently enhancing the data analysis process. This decision was informed by Merriam (1988), cited in Bowen (2009, p.190) that archival data assists “researchers [to] uncover meaning, develop understanding, and discover insights relevant to the research problem”. Moreover, compared to questionnaires and/or surveys, the documentary evidence (i.e. data gathered from company annual reports, information from company websites, media publications, and other official and archival documents) is usually free from researcher bias (Bowen, 2009).

Subsequently, the interviewee accounts concerning how Kenya's CG code emerged and continues to be implemented, were tape recorded with their permission. This direct contact with actual CG actors permitted the researcher to immerse in the CG phenomena, and understand its 'substance' as opposed to 'appearance' which may sometimes be misrepresented (McNulty et al., 2013).

Finally, this combination of multiple data collection methods was intended to enhance the dependability and credibility of findings reached in this study (Bryman and Bell, 2007, p. 411-414). In this manner, content analysis of documentary evidence was first carried out to enable the researcher to formulate meaningful interview questions, and identify potential respondents for in-depth semi-structured interviews. This was then followed by qualitative interviews, which were analysed utilising thematic analysis technique. This combination of different types of data and its analysis enhanced the findings reached in this thesis owing to the resulting benefit of triangulation of evidence (Creswell, 2003, p.190).

### **4.3 Data Analysis**

Qualitative research typically involves voluminous amounts of textual data, or to some extent a mix of both text and numerical data, all which is largely context-based. Therefore, for researchers to reach rigorous findings, it is necessary to choose an appropriate analytical framework, and provide details of how raw data is transformed into convincing interpretations of the phenomena under investigation. Furthermore, the approach selected in analysing the data should cohere with the philosophical stance adopted in the study (Easterby-Smith et al., 2008). For purposes of this study, the researcher adopted two methods in the data analysis – thematic analysis and content analysis – where the two methods were utilised in the analysis of interview data and documentary evidence respectively. These two data analysis approaches are discussed in detail below.

### 4.3.1 Thematic Analysis

The researcher has utilised a thematic analytical framework for analysing the data gathered from semi-structured interviews with research participants. The semi-structured interview method of data collection usually comprise vast amounts of textual data which can be time consuming to analyse, especially where a researcher lacks prior experience with such data (Bryman and Bell, 2007). Notwithstanding, this was not an issue of concern in this study as the researcher has previously carried out similar analysis of semi-structured interview data, in a prior MRes pilot research which preceded this PhD thesis.

Generally, there are two main analytical frameworks – analytic induction and grounded theory – for analysing qualitative interviews. *Analytic induction* approach is largely utilised for studies which use predetermined theories to explain the data gathered, while in *grounded theory* approach, researchers begin the process of data collection and analysis without theory, and instead generate theory from the data analysed (Punch, 2005, Bryman and Bell, 2007). Hence, analytic induction appears to be the most appropriate analytical framework for analysing the semi-structured interview data for this study. This is because the study follows a theory-driven conceptual framework, where the researcher began by reviewing gaps and weaknesses in literature, together with predetermined theories for explaining data gathered for purposes of this research (Bryman and Bell, 2007).

However, further variations of data analysis exist within analytic induction including, thematic analysis and discourse analysis. For instance, discourse analysis seeks to generate meaning of data beyond the naturally spoken language, to include participants' responses in form of body movements and hand signals (Easterby-Smith et al., 2008). In view of this, discourse analysis deviates from the objective of this study, which is to understand how CG is practiced within firms in Kenya, as opposed to the bodily actions of the respondents. For this reason, thematic analysis was the most suitable analytical method for analysing the semi-structured interview data in this research. Moreover, Bryman and Bell (2007) argue that

thematic analysis is rigorous enough to make contribution to theory, as the iterative process involved assists researchers to exhaustively review data for various themes, thereby enhancing the credibility of the findings reached.

Accordingly, this study adopted the six-step process as recommended by Creswell (2003) for purposes of guiding the thematic analysis of interview data. Notwithstanding, whilst Creswell's framework comprises six distinctive stages, it is designed to allow researchers to move iteratively, back-and-forth, until all data has been adequately interpreted.

**Table 4.1: Steps followed in thematic analysis**

Stage	Description
<i>Step 1:</i> Preparing data for analysis	This step involves the process of interview transcription, and typing associated field notes in preparation for data analysis.
<i>Step 2:</i> Reading and re-reading the data	During this stage, researchers familiarise themselves with the transcribed interview data and field notes, in order to gain an overall understanding of the data, besides identifying the latent meanings of such data.
<i>Step 3:</i> Coding the data	At this stage, a comprehensive analysis of the entire data is conducted. This includes grouping/categorising sentences and/or paragraphs of the data according to similarity in meanings, and thereafter assigning a code for each category.
<i>Step 4:</i> Designing theme descriptions	The codes assigned above are then merged to form fewer themes, approximately 5-7 themes which act as headings in the findings reported.
<i>Step 5:</i> Narrating themes to convey findings	The themes developed from the coding process are then discussed in narrative form to report the findings reached from the data. These themes are further supported by quotations from respondents' accounts.
<i>Step 6:</i> Data interpretation	Finally, the findings reached either confirm or challenge prior research findings. This enables researchers to refine, or, create new knowledge or theories.

Source: Creswell (2003, p.190-195)

### **4.3.2 Content Analysis**

The researcher utilised a content analysis method for interpreting the documentary evidence, gathered mainly from company annual reports, company websites, mass media, and other archival and official documents. Content analysis is the most popular of the three main approaches used in analysing documents within social science research. The other methods include semiotics and hermeneutics (Bryman and Bell, 2007). Semiotics is a documentary analysis technique which mainly interprets meanings represented in symbols, and therefore less suitable for detailed analysis of textual content such as the one collected for this study. Hermeneutics, on the other hand, focuses on interpreting textual data with a view to revealing the underlying meaning from a document author's perspective; thereby, deviating from this study's objective to discern underlying themes within documents rather than their authors motives (Bryman and Bell, 2007, p.571-575).

Indeed, content analysis has also been previously used in CG research to analyse documentary data. As an instance, Balasooriya et al. (2010) studied CG reforms within Sri Lanka's telecommunications industry using evidence from published and non-published documents to supplement interview data. Such documents included government documents, donor reports, company reports and other published information. The writers then used the NVivo data analysis software to conduct a content analysis of the data, thereby assisting in triangulation of evidence. Accordingly, content analysis was instrumental in understanding how CG is practiced within Kenya. Documentary data served as an important source of evidence since all Kenyan listed firms and regulatory bodies periodically publish reports and other documents to communicate with their stakeholders. This study finds such documents to be a rich source of data as discussed in section 4.5.3. Moreover, the researcher utilised the NVivo software to analyse data, subsequently ensuring a systematised interpretation of data to enhance the rigor of this study's findings (Bryman and Bell, 2007, Easterby-Smith et al., 2008).

The sampling procedure for selecting the data used in this research is discussed in the next section.

#### **4.4 Sampling strategy**

This research sought to gain an in-depth understanding of how Kenya's CG code is practiced within the prevailing institutional environment. Accordingly, the sample was chosen from listed firms which are expected to implement provisions of the Kenyan CG code as part of their continuous listing requirements, including: holding AGMs, independent boards, existence of key board committees, and publishing audited financial statements. This way, it is possible to understand how institutional factors influence the actual CG practices versus the expectations of the CG codes. Conversely, privately-held companies are not compelled by law to adopt CG regulations and therefore, even if data was available, their inclusion in the study is unlikely to provide a good understanding about the practice of CG in Kenya. These are also the same reasons why similar studies focused on listed companies as their unit of observation for CG data (e.g. Uddin and Choudhury, 2008, Wanyama et al., 2009, Siddiqui, 2010).

There are currently 61 listed companies at the Nairobi Securities Exchange (NSE) and out of which, 45 companies will be selected for inclusion in the sample for documentary data. This represents approximately 74 percent of Kenyan listed companies, thus enhancing the study's credence for representativeness in sampling, along with negligible risk of bias (Easterby-Smith et al., 2008). The sample of 45 firms excludes the six recently listed firms, together with ten firms whose annual reports were unavailable from both the NSE website and respective company websites. Moreover, the NSE is divided into 11 sectors as shown in table 4 below. The researcher included all the sectors within the sample of documentary data, apart from the Growth Enterprise Market Segment, whose only company was listed at the NSE in 2013 (Njoroge, 2013). Nonetheless, the remaining ten sectors have an average



representation of 79 percent of companies, included in the documentary evidence sample (Barako et al., 2006).

**Table 4.2: NSE sector representation**

Sector	Number of listed companies	Number to be included in sample	Percentage included
Agricultural	7	5	71.4
Commercial and Services	9	6	66.7
Telecommunication and Technology	1	1	100
Automobiles and Accessories	4	4	100
Banking	11	8	72.7
Insurance	6	4	66.7
Investment	3	2	66.7
Manufacturing and Allied	9	6	66.7
Construction and Allied	5	5	100
Energy and Petroleum	5	4	80
Growth Enterprise Market Segment	1	-	-
<b>Total</b>	<b>61</b>	<b>45</b>	<b>≈ 79%</b>

*Source:* NSE website

After review of the documentary data, a purposive sampling technique was then chosen for selecting the participants for in-depth semi-structured interviews. Purposive sampling is a non-probability sampling procedure usually popular in qualitative studies, and where a researcher deliberately picks a sample “with a purpose or focus in mind” (Punch, 2005, p.187). Accordingly, purposive sampling method permitted the researcher to gain more insights about key themes, which were established from the documents analysed. Moreover, the participants of this research were selected based on their perceived experiences of Kenya’s CG environment, along with ability to provide rich insights about the workings of CG in Kenya. Accordingly, the sampling strategy began by reviewing documentary evidence concerning Kenya’s corporate sectors operations, before using judgement to choose a smaller sample for in-depth interviews. This approach is standard for studies such as this thesis, where similar writers also conducted their studies by first reviewing documents to

understand the CG environment and then followed with in-depth interviews (see Adu-Amoah et al., 2008, Uddin and Choudhury, 2008, Angaye and Gwilliam, 2009).

## **4.5 Data Collection Methods**

This study uses both primary and secondary data in an attempt to triangulate for evidence, subsequently enhancing the credibility and dependability of findings reached. The researcher utilised in-depth semi-structured interviews and field observations to gather primary data. This permitted closer engagement with the phenomena under investigation through direct interaction with key CG practitioners. Secondary data was gathered from company annual reports, company websites, mass media, and other official and archival documents, thus giving the researcher a comprehensive understanding about the practice of CG within the Kenyan corporate sector. The discussion in the subsections below explains in detail the steps followed by the researcher in collecting data employed in this study.

### **4.5.1 Primary data: Semi-structured interviews**

Semi-structured interviews are useful data collection method where researchers seek to gain in-depth and first-hand accounts about the views, perceptions, and opinions from respondents regarding a phenomenon under investigation. This is because such interviews have less structure except for few questions to guide the researcher. Therefore, this avails more flexibility which allows researchers to ask additional questions based on participants responses. Accordingly, the researcher is able to discover new meanings which may not have been earlier envisaged, as well as move the interview conversation in direction that will provide rich data. The data collected from semi-structured interviews comprises of descriptive accounts from respondents, based on their views and interpretations of the subject under investigation (Easterby-Smith et al., 2008).

Interviews broadly assume three levels of structure – highly structured, semi-structured and unstructured interviews. Highly structured interviews are largely positivistic and

recommended for large-scale studies seeking to generalise their findings. As a result, highly structured interviews are unsuitable for studies such as this one, which is situated within an interpretivist stance. On the other hand, unstructured interviews have a high risk of gathering poor quality data due to lack of guiding questions to prompt the researcher in the course of the interview (Easterby-Smith et al., 2008). For these reasons, the researcher believes that semi-structured interview format is the most appropriate interview method for this study. Moreover, semi-structured interviews are the most widely used data collection method within qualitative CG research owing to their ability to uncover meanings about actual CG phenomena beyond what is publicly available in form of annual reports or other archival evidence (McNulty et al., 2013).

Accordingly, the researcher conducted 21 face-to-face interviews with key CG actors – senior officials of listed companies, representatives of various regulatory bodies, and CG trainers. According to Guest et al. (2006), 5 to 25 interviews are usually sufficient for a phenomenological study such as this research project, to achieve data saturation. Each interview lasted between 60 and 90 minutes. The research participants were requested to read and sign a consent form before an interview could commence, and after the purpose of their involvement in this research had been explained. 17 interviews were tape recorded and later transcribed. Tape-recording the semi-structured interviews permitted the researcher to focus on the interview discussion, without need to write down lengthy notes. Also, brief notes about key issues emerging during the interviews which were tape-recorded, were also noted down to enable the researcher to probe them further with those participants, as well as other participants interviewed thereafter. Notwithstanding, four interviewees did not give consent for recording of interviews, prompting the researcher to take notes as the interview progressed. Finally, the real identities of participants and/or their organisations has been anonymised in this research in line with ethical principles of conducting research.

#### **4.5.2 Primary data: Field Observations**

The researcher attended 6 AGMs of listed firms between April–June 2015. This was intended to permit first-hand observation of shareholders' behaviour within the Kenyan CG landscape, as well as conduct of AGMs from start to finish. The presence of the researcher during the AGMs also permitted understanding concerning expectations of different shareholders (e.g. minority and large investors), as well as the senior management. Saunders et al. (2012, p.299) notes that observations avail researchers, among other advantages, “heightened awareness about social processes” as well as “opportunity to experience emotions of those being researched”. Access to AGM venues was negotiated in advance with officials of the companies. Initially, nine companies were approached with requests to grant the observation of their AGMs. However, three firms declined the researcher's request hence leaving 6 AGMs to observe.

Observation of AGMs is argued in to literature to provide researchers with a unique opportunity to examine shareholder-management interactions, as well as insights about shareholders' contribution to the CG processes (Uddin and Choudhury, 2008, Adegbite et al., 2013). Some notable features of the AGMs observed include how some firms had English as main language of the meeting while used a mix of English and Swahili. It was also important to observe how prepared shareholders were upon arrival at the meeting. In two of the AGMs, some shareholders asked the board chairs why the annual report booklets had not been posted to them. They were informed that copies of the annual reports can be accessed from the companies' websites, as they stopped posting them to shareholders in order to cut down on postage fees. Given the low internet penetration in Kenya (Ministry of Information Communications and Technology, 2014) it can thus be argued that majority of shareholders attend AGMs without having read relevant AGM reports. Lastly, the researcher made detailed handwritten notes of observations during the AGMs, instead of audio-recording the proceedings. This decision was made to avoid tape-recording attendees without explicit

consent, considering that various people would have been speaking during the AGMs proceedings. The AGMs lasted for an average duration of approximately two hours and they all took place in Nairobi, Kenya.

#### **4.5.3 Secondary data: Documentary evidence**

Organisations communicate their decisions, activities, financial performance or compliance with laws and regulations mostly through written communication. For instance, listed companies are required under law to prepare audited reports of their affairs, both financial and non-financial, at least once annually. Also, periodical publications by enforcement agencies or market regulators usually provide useful analysis about the performance or developments within an industry or market. Financial press publications may bring out interesting reports which little may have been known before. Such documents that complement other types of data such as audio and visual data are argued as rich sources of evidence within social science research (Punch, 2005).

For purposes of this research, annual reports of listed companies constituted the major type of documentary evidence. In addition, other documentary data such as information from company websites, mass media, and other archival and government documents further added to the evidence used in this study. For instance, Uddin and Choudhury (2008) and Angaye and Gwilliam (2009) in similar studies examining the practice of CG within LDCs contexts, utilised documentary data accompanied by semi-structured interviews; thus, allowing them to triangulate for evidence. Moreover, a recent survey of ‘published qualitative CG research’, found documents as the second most dominant source of data after interviews, where the former is further noted to as popular source of supplementary evidence for rich CG analysis (McNulty et al., 2013).

## 4.6 Ethical Considerations

This research was conducted within the guidelines of ethical research, including: interactions with research participants, and conducting the data analysis (Bryman and Bell, 2007, Easterby-Smith et al., 2008). Accordingly, the researcher was guided by the ethical principles outlined in the table below, as suggested by Easterby-Smith et al. (2008), both as a way of maintaining professionalism and ethical conduct throughout this research.

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Insert table 4.3 about here  
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In addition to the ethical guidelines in the table above, the researcher formally sought for an ethical approval of this research from the Open University's Human Research Ethics Committee (HREC) (see appendix 'C'). Also, the researcher prepared detailed *Research Project Information and Consent Forms* (see appendix 'D') that explained the purpose of this research to the research participants. This included an assurance to all research participants that their privacy and identities will be protected both during and after the research process was completed.

**Table 4.3: Ethical principles followed in conducting research**

Step	Principle
1	Ensuring no <i>harm</i> comes to participants
2	Respecting the <i>dignity</i> of research participants
3	Ensuring a fully <i>informed</i> consent of research participants
4	Protecting the <i>privacy</i> of research subjects
5	Ensuring the <i>confidentiality</i> of research data
6	Protecting the <i>anonymity</i> of individuals or organisations
7	<i>Avoiding deception</i> about the nature or aims of the research
8	Declaration of affiliations, funding sources and <i>conflicts of interest</i>
9	<i>Honesty</i> and <i>transparency</i> in communicating about the research
10	Avoidance of any <i>misleading</i> , or false reporting of research findings

Source: Easterby-Smith et al. (2008, p.134)

## **4.7 Chapter Conclusion and Summary**

This chapter discusses the reasons that informed the choice of a qualitative methodology in governing the processes of data collection, analysis and eventual interpretation. One of these reasons is the nature of the dominant theoretical perspective used in this study, that is, NIS which assumes a social constructionist stance that falls within the qualitative methodology. The other consideration was a motivation for this thesis to contribute to a dearth of qualitative based CG research. Also, the leading research question guiding this inquiry is positioned within the interpretivist paradigm, thus warranting a qualitative approach. For these reasons, semi-structured interviews and field observation data were employed to collect primary data. This was intended to allow the researcher close interaction with CG actors within Kenya's corporate sector, in order to gather detailed understanding regarding their experiences of practising Kenya's CG code. The discussion in this chapter also explains the significance of archival data in enhancing the dependability and reliability of findings reached in this thesis. The methodological discussion provided in this chapter also explains the two methods utilised in analysing the data collected, that is, thematic approach and content analysis. The two data analysis techniques were used to analyse interview data and documentary evidence respectively. Finally, this chapter then outlines the steps followed by the researcher in ensuring that the present study is conducted within ethical guidelines for conducting academic research.

## **Chapter 5 – Implementation of the Kenyan Corporate Governance Code**

### **5.0 Introduction**

This chapter provides a discussion concerning how Kenya's (Anglo-American inspired) CG code is practiced within the country's contextual reality. It specifically addresses the question: what factors influence the implementation of Kenyan CG code within the corporate sector? In answering this question, the discussion in this chapter utilises the three theories adopted in this study – new institutional sociology (NIS), agency theory and stakeholder theory – to make interpretations about the data analysed. Accordingly, various inhibitors – such as weak regulatory environment, rampant corruption and bribery, tribalism, low financial literacy among the investing public, board malpractices and poor board nomination practices, political interference, and traditions and culture – are identified as some of major impediments to the implementation of the Kenya's CG codes provisions. Moreover, such constraints are noted to occasionally result in selective compliance with the CG code, as well as attenuating the effectiveness of applied provisions of the CG code. This chapter's discussion is structured along the five pillars of institutional influence identified from the literature reviewed in chapter 2 – (a) supervision and enforcement; (b) boards of directors; (c) shareholder rights; (d) stakeholder relations; and (e) transparency and disclosure – thereby explaining the institutional constraints shaping the manner in which the Kenyan CG code is implemented within the corporate sector. The findings reported in this chapter are drawn chiefly from primary data collected through semi-structured interviews.

The rest of the chapter is organised as follows: section 6.1 to section 6.5 provides a comprehensive analysis about the implementation of the Kenyan CG code with regard to the Kenyan institutional and regulatory framework (section 6.1), ownership structure of Kenyan firms (section 6.2), role performed by the board of directors in Kenyan firms (section 6.3), role played by and for stakeholders of Kenyan firms (section 6.4), and transparency of the Kenyan CG process (section 6.5); respectively. Section 6.6 provides a summary for this chapter.



## 5.1 The Kenyan Institutional and Regulatory Framework

This section explains the impact of the legal and regulatory framework in Kenya on the implementation of the CG code. Specifically, the discussion provides an analysis concerning the effectiveness and fitness of the legal and regulatory environment, including ancillary corporate statutes. The objective is to discuss findings about the manner in which this CG pillar impacts the implementation of Kenya's CG code.

### 5.1.1 Multiplicity of regulation and regulator conflicts

The evidence examined to understand how the legal and regulatory framework within Kenya, identified in this study as an important pillar for successful implementation of CG, revealed various weaknesses which puts to question its ability to support the Kenyan CG process. These limitations manifest themselves in the configuration of the legal/regulatory framework, or clashes with the underlying socio-political environment; for instance, inefficiencies within regulatory bodies, poor coordination amongst regulators, unclear regulations and political interference, and culture. An analysis of these issues, including their consequences in the implementation of Kenya's CG code, is discussed below.

*“...we see conflicts in regulatory requirements where one regulator asks for one thing and the other regulator threatens to penalise you if you do that...there is need to harmonise the regulatory framework because some agencies do more or less similar work...I don't see the point of having the CMA, CBK, IRA, RBA because really they do similar work...there should be just one body which can do all their work and hopefully help to remove the grey areas in regulation and also avoid the rivalry that plays out occasionally ...” (Interviewee L)*

The above interviewee statement illustrates a general opinion that the presence of different regulatory agencies within the financial markets acts as an impediment to effective CG compliance by listed firms. For instance, while listed firms are under the umbrella supervision of the CMA there are other industry specific regulators which subject firms to

additional regulatory requirements such as CBK for listed banking firms, IRA for listed insurance companies. Indeed, the following excerpt from a recent World Bank report aptly captures the views expressed by respondents from the financial services sector:

*“...the CBK and IRA issue prudential requirements that [...] prevail over IFRS ... Accounting differences do arise between the banking and insurance sectors, such as in loan-loss provisioning of banks and calculation of technical reserves in the insurance sector. Such differences could lead to inconsistencies in application of accounting regulations across banks and insurance companies, limiting transparency and comparability. Furthermore, it remains unclear which accounting profit, based on either IFRS [as required by the accounting body] or prudential requirements will be the basis for tax calculation or profit distribution” (ROSC, 2010, page 13).*

The above statement evidences how the arrangement of the Kenyan regulatory framework puts the various regulatory bodies on a collision path, e.g. the Central Bank and ICPAK/IRA, as well as the CMA's expectations. The potential magnitude of these problems cannot be underestimated given that banking and insurance firms alone constitute 25% of the Kenyan listed firms. Notwithstanding, firms with state ownership are also controlled by at least three other agencies further complicating the regulatory landscape, as an interviewee explained:

*“...there is the inspectorate of state corporations (ISC), the efficiency monitoring unit (EMU) and state corporations advisory committee (SCAC)... past regimes in an attempt to patronise the business world [in Kenya] have created bodies said to regulate all government owned companies...however, these are entities used by the government to meddle with the affairs of the affected companies rather than facilitate them...you will see them sending auditors to a company if they want to kick out a CEO...” (Interviewee C)*

The statement above shows the regulatory burden encountered by government-owned listed firms, since they have to also implement the regulations of the three agencies – ISC, SCAC, and EMU. This is in addition to the primary regulators such as CMA, ICPAK, Companies Registry, and CBK/IRA for the financial firms. Specifically, the evidence suggests that in addition to the potential challenges like conflicting regulations, these agencies provide additional avenues for propagating state/political interference in business. This cannot be underestimated as government-controlled firms constitute almost a fifth of the listed firms.

Besides, the now outmoded company statutes in Kenya was criticised in a World Bank report noting:

*“...The [...] Companies Act fall short of international good practice...[it] requires companies to prepare income statement and balance sheet and prescribes what should be included in these statements... [it] does not require the Kenyan companies to prepare the cash flow statement and statement of changes in equity. This is clearly in conflict with IFRS [as required by ICPAK].” (ROSC, 2010, page 6)*

This evidence highlights an area of regulatory conflict between the provisions of the companies act and the IFRS regulations, which are enforced by the companies’ registry and ICPAK respectively. Such conflicting regulations place the regulatory bodies on a collision path, and subsequently force firms to comply with competing/conflicting CG expectations. It is also likely that ‘grey areas’ may arise from this regulatory web, around the boundaries of each regulatory body; relative to having a common regulator overseeing, say, all financial or government-controlled firms. As a result, conflicts within the regulatory environment suggest that it would be difficult for the legal and regulatory pillar to exert homogenous behaviour – coercive isomorphic pressure – across firms. This invalidates the assumption of coercive isomorphism as suggested by NIS theory that the presence of laws and regulations, results in similar behaviour within an organisational field (DiMaggio and Powell, 1983, Dacin, 1997).

Besides, Kenya's accounting framework may be further questioned particularly noting that ICPAK made a "wholesale adoption of IFRS" (ROSC, 2010, page 13). As evidence suggests, IFRS standards which were adopted within LDCs, without being modified to fit with individual country peculiarities, are potentially ineffective (e.g. see Tyrrall, 2007).

### **5.1.2 Inefficiencies within the Regulatory Bodies**

The legal and regulatory framework underpinning the CG system in Kenya further appears to suffer from various other weaknesses, which cast doubts concerning the capacity of the respective regulatory bodies to support an effective CG environment. For instance, there was unanimous interviewee opinion that:

*"...whilst other regulators have played some role in ensuring firms compliance with the CG code, the Companies registry is too disorganised to play any meaningful role in CG..."* (Interviewee J)

One interviewee added:

*"...our company's returns have been outstanding for a few months now. The registrar is unable to confirm to us because they cannot find the copies of our returns in their records...they have now asked us to take fresh copies together with the payment receipt which they issued to us last time for subsequent filing...this happened again and affects nearly every company...if you visit their office you find that files are strewn everywhere and they cannot trace anything...they need to get computerised..."* (Interviewee S)

The above two statements represent the overall respondents' views regarding the role played by the Registrar of Companies, which ideally should ensure firms compliance with the Companies laws; hence, an important basis upon which the application of CG code depends. Nevertheless, the above evidence suggests that the Companies Registry, a component of

Kenya's regulatory framework, is ineffective due to resource constraints thus limiting the pillar's ability to support effective CG implementation.

Moreover, interviewee responses further expressed concerns regarding the role played by CMA in overseeing firms' compliance with CG:

*"...CMA should be more proactive in the implementation of CG in Kenya...the aspect of supervising and ensuring that CG is properly adhered to is missing...for example if they don't sample a few of the various AGMs, where else can they learn best whether CG is benefitting the shareholders?...going into those meetings to see how shareholders are treated, or what is it that they are interested in so that tomorrow you are then educating the minority shareholder to know where to pick on...the CMA doesn't do that..."* (Interviewee O)

Other interviewees noted that the CMA was not doing enough to ensure firms compliance with the provisions of the CG code, as follows:

*"...the CMA is not very strict. They should be penalizing or coming up with various strategies and schemes of actually ensuring that we are complying with CG practices...but you only see them when there has already been a problem...why don't they for example go after firms with over-age directors, or blacklist directors who have [misappropriated] company money and are still serving in boards..."*  
(Interviewee S)

Another interviewee added:

*"...due to political pressure sometimes CMA does not take decisions which it's supposed to take...the CEO is an appointee of the government. It's also funded by the government and whoever is there, normally will have to think on what decision to make and who is involved...where there is no political interest they work very*

*well...but if a well-connected director or company flouts some regulations they are normally very careful...” (Interviewee D)*

The above statements demonstrate how the CMA, the principal CG overseer in Kenya, suffers from various shortcomings, such as failure to keep watch over minority shareholders expectations, perceived complacency, and political interference. Collectively, the presence of problems suggests that the CMA, another constituent component of the CG regulatory framework operates at suboptimal efficiency. Consequently, the CMA’s inefficiencies lead to weakened coercive pressures for firms to implement the provisions of the CG code. This is consistent with Rashid (2011) finding that BSEC<sup>27</sup>, the primary CG regulator in Bangladesh, suffers from institutional weaknesses which impede its capacity to oversee CG implementation. Some of the key institutional factors which hinder the effective operations of BSEC include inadequacy of skilled staff, and lack of professionalism by BSEC’s staff who were also found to participate in corporate malpractices. This therefore weakened the ability of BSEC to exert coercive isomorphic pressure on firms, to follow the provisions of the Bangladesh CG code, resulting in low CG compliance (Rashid, 2011).

## **5.2 The Ownership Structure of Kenyan Firms**

### **5.2.1 Nature of dominant owners**

Kenyan listed firms exhibit four broad patterns of ownership, with the dominant shareholder(s) taking any of the first three forms: (a) foreign and/or local institutional investors; (b) controlling family owners; (c) the government for the listed denationalised firms; and (d) minority/individual shareholders. This study finds the presence of dominant shareholders to be a key consideration concerning a firm’s CG practices. In addition, firms with the same types of dominant owners, such as government or families, are found to show

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<sup>27</sup> BSEC - Bangladesh Securities Exchange Commission.

similar practices in implementing CG provisions. This is demonstrated in the interviewees' responses provided below:

*Institutional investors are quite savvy in understanding and protecting their rights as provided for in the CG guidelines, including attending the AGMs and participating in corporate strategy as they also have seats on the board. On the other hand, individual shareholders are less savvy, and majority of them do not actively participate in AGM discussions...Look at a company like XXXX, when [foreign institutional investor] bought a controlling stake in that bank, it has even outdone the older and previously more established banks like YYYY and ZZZZ... (Interviewee J)*

*In companies such as ours and others like [names withheld] ...one of the issues you will see is that these companies are controlled by certain families' which own majority of the shares. These families then appoint some directors to sit in the board, and you also find those directors to be very domineering such that all other directors will sort of have allegiance to the directors representing the family. The other directors are like the family's employees and they wouldn't go against the family representatives, or criticise their poor decisions...This is because that family literally owns our company and the other non-family directors are like the family's employees... (Interviewee S)*

*If you look at the listed companies frequently appearing in the media for the wrong reasons, the government is a major shareholder. Look at [five company names withheld] ...Most of the people appointed to represent the government in those companies' boards are political cronies of the appointing authority [ministers] and are individuals who have nothing much to offer...those companies still behave as if they are government parastatals [despite their privatisation] (Interviewee N)*

The above statements denote the interviewees' opinion that the quality of firm CG practices is to an extent defined by the nature of its controlling shareholders. Notwithstanding, there exists mixed findings regarding the impact of controlling/dominant shareholders on the quality of CG practices in various countries (Klapper and Love, 2004, La Porta et al., 1999). One school of thought suggests that controlling shareholders provide increased monitoring of agent behaviour, subsequently reducing agency problems (Shleifer and Vishny, 1997, Desender et al., 2013). On the other hand, controlling shareholders have been found to abuse their voting power through undermining minority shareholders rights, as well as misappropriating firm resources (Lin and Chuang, 2011, Young et al., 2008). The latter phenomenon is particularly evident within LDCs and emerging markets (Claessens and Yurtoglu, 2013).

Also, the interview excerpts above correspond with extant literature that LDCs governments tend to be dominant owners of listed firms owing to the high number of denationalised, listed, firms (Berger et al., 2005, Fan et al., 2011). Firms with government ownership were viewed to have the weakest CG practices owing to poor management, corruption, and heavy government interference, and prolonged poor financial performance. Government ownership of firms within LDCs is reported to be a constraint to good CG practices with listed government-controlled firms found to have high incidences of corruption (Fan et al., 2011), and political interference (Cuervo and Villalonga, 2000, Shleifer and Vishny, 1997). This finding suggests that not all large shareholders enhance firm CG practices as assumed by agency theory, and thus challenges the theory's assumption that such investors help to reduce agency problems (Shleifer and Vishny, 1997).

Furthermore, listed firms with controlling familial ownership were also viewed to have relatively weak CG with the greatest concerns for firm CG practices being the disregard of minority shareholders, weak board independence as familial directors were reported to dominate their boards, and to have poor disclosure potentially to conceal questionable related



party transactions. These observations correspond with extant literature where family-control of LDCs firms has been reported to be contributor to poor CG practices due to poor board nomination practices (Uddin and Choudhury, 2008), and poor disclosure levels (Ehikioya, 2009). Notwithstanding, familial ownership is argued to exacerbate rather than reduce CG problems within public firms under their control, further challenging agency theory's proposition that large investors *always* minimise agency problems (Shleifer and Vishny, 1997).

On the other hand, there was consensus of opinion amongst interviewees that firms whose ownership is dominated by institutional investors have better CG practices, with those controlled by foreign institutional investors' further regarded as exhibiting desirable CG practices compared with firms dominated by local institutional shareholders. Moreover, the former are more experienced in governance and financial management matters by virtue of their presence in different CG environments (Filatotchev and Wright, 2011, Aguilera and Cuervo-Cazurra, 2004). Likewise, the superiority of CG practices within firms controlled by foreign institutional shareholders, relative to those controlled by local institutional shareholders, may be explained by the fact that foreign investors are less entangled in the local culture which constrains firm CG practices (Peng, 2003, Ahunwan, 2002). According to Filatotchev and Wright (2011), firms controlled by foreign institutional investors may also exhibit better CG practices compared to those dominated by local institutional shareholders because the latter usually tend to have strong familial links, or may be family-owned, and therefore prone to challenges of familial ownership. Notwithstanding the benefits associated with institutional investors, very few firms are dominated by foreign institutional shareholders (Claessens and Yurtoglu, 2013), as is also the current case with Kenya. This therefore slows the diffusion rate of global CG practices into the LDCs, and the isomorphic pressure on domestic firms to adopt best CG practices is also less; as proposed by the new institutional theory (DiMaggio and Powell, 1983, Scott, 2001).

## 5.2.2 AGM administration and voting

### 5.2.2.1 AGM attendance

The manner in which listed firms' AGMs are conducted, including a consideration of the voting process and extent of shareholders participation, provides important insights regarding the factors influencing CG implementation in Kenya. The researcher managed to attend six AGMs of listed firms and observed how they were conducted, from beginning to the end. This also provided an opportunity to meet and speak with minority shareholders, on an informal basis, at each AGM. The ensuing discussion in this sub-section thus includes researcher observations, in addition to the interview responses and archival data.

The first thing that caught the researcher's attention, while attending all the six AGMs, was the large number of shareholders who registered for the AGM but left after collecting gifts without getting into the AGM hall.

*All the AGMs began with registration queues of the attending shareholders. Each shareholder would provide their membership number or a signed proxy form with the same, together with a proof of identification. Upon registration, every shareholder was then offered some gifts such as a company branded umbrella, a cap or T-shirt. In addition, each shareholder was handed food in a paper lunchbox. However, as most registrations desks were located near the entrances to the AGM venues, many minority shareholders left immediately after collecting their gift packs, without attending the AGMs (Researcher's observation).*

This observation was confirmed by registration clerks who, upon inquiring, remarked that this has been a long-time behaviour of the ordinary shareholders. Another interviewee, who is also responsible for investors' relations in his firm, commented:

*...Although I can't put a figure to the number of shareholders who seem to come to the AGM just to collect the freebies...that number is quite big I must say...when you*

*add those who did not come, you realise that an awful number of the small shareholders do not at all participate in the AGM consultations at all... (Interviewee F).*

Another interviewee remarked that resolutions in some AGMs are passed without the requisite quorum, particularly where voting is done by show of hands, as the number of shareholders sitting in the meetings is commonly fewer than those who register at the gate:

*...most of the AGMs in this country do not even have the quorum because like you saw, majority of the shareholders turn back once they pick their goodies...that is all they go there for...sometimes even the value of the goodies may be more than the dividends they get ... unless the Articles of Association define quorum in terms of shares held, but if it is the number of shareholders present, then very few if any companies have quorum... (Interviewee I)*

The evidence above corresponds with Uddin and Choudhury (2008) finding where a company they observed had more than 12,000 shareholders registering at an AGM, but only 200 proceeded to the AGM hall. The authors observed that majority shareholders “*came to the AGM venue only to collect the expensive and delicious lunch pack offered by the company [...] than listening to the AGM proceedings...*” (Uddin and Choudhury, 2008, p.1039). This finding offers an insight into how vulnerable the general shareholders within LDCs, including Kenya, are, since they fail to utilise the AGM opportunity to consider executive and board performance, or even vote one of their own into the board to ensure that minority shareholders’ interests are looked after. Also, their failure to obtain feedback about firm operations and performance during the AGM only increases information asymmetry between the absent shareholders and the executives (Eisenhardt, 1989, Shapiro, 2005), their agents, further aggravating the prevalence of agency problems. This finding exposes another weakness of agency theory’s assumptions that information asymmetry only arises due to managers deliberately being unaccountable (Eisenhardt, 1989, Shapiro, 2005), as in this

case, it is the shareholders who show disinterest in utilising an existing channel of communication.

#### **5.2.2.2 AGM administration and participation**

The other concern with the AGMs is the manner in which the shareholders partake in them. For instance, proceedings in majority of the AGMs observed were dominated by the use of the English language which potentially limited the extent of participation by the present shareholders.

*Out of the six AGMs observed, only one AGM's business was conducted in two languages – English and Swahili (the latter being Kenya's lingua franca). This therefore puts to question the success of the AGM's objective as a forum for speaking to and listening from shareholders; since not all Kenyans – and shareholders in this instance – are proficient in the English language (Researcher observation).*

An interviewee also commented:

*...it might be time consuming to have the AGM in English and Swahili and the board will want to get done with the AGM as soon as is practically possible...because most shareholders are not comfortable with English in which most AGMs are conducted they don't see the need to attend that AGM and that is why most of them go there to just pick the goodies... (Interviewee D)*

The above evidence coincides with Taurigana et al. (2008) finding that majority of the general Kenyan shareholders are modestly educated, and face a challenge of comprehending corporate information prepared in English. Accordingly, this study suggests that whilst holding an AGM in dual languages – English and Swahili – may stretch the AGM duration, the associated benefits potentially outweigh the time sacrifice as all shareholders will be accommodated, thus reducing information asymmetry. This would also minimise agency problems and boost firm CG practices, as all shareholders would be able to participate

effectively in AGM discussions – and the CG process in general – as assumed in agency theory, without being free riders (Shleifer and Vishny, 1997, Shapiro, 2005).

Also, a large number of the shareholders who progressed to the AGM hall also left before the AGM was formally concluded, and these movements continued throughout the duration of the AGMs.

*“...upon entering, many shareholders easily get bored with the AGM discussions and leave the AGM hall within 10 minutes...”* (Interviewee G)

*In one observed AGM, the board chair had to beg the shareholders to wait for the final agenda to be finished before leaving. “Let me finish with this final item before everyone walks out...” However, his plea did not stop the mass walk out.* (Researcher observation)

A leading Kenyan financial daily also noted:

*Retail investors are shunning AGMs of listed firms, a trend that threatens to undermine their weak position in questioning management and board decisions to ensure they earn maximum value from shareholding... large shareholders have traditionally held sway in the running of boards, meaning that retail investors risk losing out due to apathy towards AGMs— their only chance of holding boards and management to account* (Business Daily, September 13 2010).

The above statements show that the general shareholders participation in AGMs is very minimal. As identified, many shareholders do not wait for the AGMs to end officially, with some leaving the AGM hall within a few minutes of arrival.

Furthermore, a number of the general shareholders who rise to speak would deviate from the AGM agenda into discussing unrelated matters. As the evidence below illustrates, various listed firms’ AGMs are occasionally dominated by issues which are irrelevant to the subject

of the day – review of company performance – thus raising questions about the quality of debates in such AGMs. This is illustrated in the statements below:

*...if you fail to provide freebies, or give the same gift two years in a row, you should be prepared for the shareholders wrath in the AGM...sometimes you will hear them complaining “what is this you are giving us”, or, “look at the quality of lunch you are giving us!” (Interviewee R)*

*In one of the observed AGMs, a shareholder rose to speak complaining that they had been given fewer pieces of chicken compared to another AGM he had attended (Researcher observation).*

*AGMs [have] lost their flavour [...] they have become more about food and giveaways for shareholders than serious engagement with company boards (Business Daily, September 9 2010).*

The other challenge to quality of AGM discussions appears to be inadequate preparation by the general shareholders, which hinders their ability to participate effectively in the AGM proceedings.

*...attendance by shareholders is positive if you look at our attendance register. However, their participation is poor because they do not get an opportunity to read the annual reports beforehand...they come to the AGMs unaware of the day's agenda, hence the very little contribution...perhaps also because some may be unable to read and understand the annual report booklet (Interviewee S)*

*A shareholder raised the issue of not being able to access the AGM agenda before the AGM. The chair responded that all the information was on the company's website and, as such, was treated as read and understood. At the AGM, the resolutions to be passed were read out and shareholders asked to pass them without getting an*

*opportunity to understand what they were really passing/adopting* (Researcher observation).

The quality of debate was also weak as many shareholders kept digressing to unrelated subjects during the AGM discussions. This may be because many shareholders do not get an opportunity to read the annual reports in advance, and are only able to access them on the AGM day as they walk into the meeting hall. Considering that majority of Kenyans do not have access to the internet, it is therefore difficult for most shareholders to access any information placed on corporate websites. Accordingly, this deviates from Kenyan CG code's provision that "the board should provide to all its shareholders sufficient and *timely information* concerning the date, location and *agenda of the AGM* as well as full and *timely information regarding issues to be decided during the general meeting*" (Capital Markets Authority of Kenya, 2002, provision 2.3.2, p.479). The researcher upon inquiring from the CMA and NSE about this matter, was informed that listed companies were recently exempted from having to mail hard copies of annual reports to their shareholders in an effort to save on costs. However, with low internet connectivity as a significant information infrastructure challenge in Kenya, it is arguable whether many shareholders are able to enjoy their *right to timely information* before the AGM discussions, or the actions of the board may be a strategy to evade scrutiny by the shareholders. The attempt to reduce information dissemination (monitoring) costs poses a risk of exacerbating information asymmetry hence aggravating agency problems, making the cost-saving idea counterproductive (Jensen and Meckling, 1976, Fama, 1980, Fama and Jensen, 1983).

There was further consensus among the respondents that ordinary shareholders participation in the CG process, is deliberately constrained by some boards through stage-managing AGMs. Consequently, the colluding shareholders are bribed and given the questions to ask, while shareholders with genuine issues are ignored during the questions time.

*[Shareholder name withheld] is well known around here...in my view he is more of a gun for hire by boards than an accomplished investor...you will find a board inviting him for a meeting before any AGM where he is silenced [bribed] ...it is a strategy used by some boards for managing potential trouble makers...most of the issues he raises do not have any depth, but he can embarrass the board or management...most AGMs are stage-managed whereby even the flow of questions is well calculated by the chairman... (Interviewee D)*

*Whilst observing the AGMs, one shareholder attended all the six AGMs and also appeared to be quite well-known by the board chairs of these companies as they would call him to speak. This shareholder stood to ask questions, propose or second a resolution, or to just make a commentary, sometimes rising to speak on multiple occasions in one AGM where only about 4 to 6 shareholders would speak. The shareholder showed more familiarity with the boards of the six firms observed than any of the other shareholders (Researcher observation).*

The issue of stage-managed AGMs and shareholder bribery also came up several times during the research fieldwork. It has almost become a tradition that representatives of listed firms, in order to avert criticism during the AGM, invite a few general shareholders for ‘briefings and forward planning’ (Interviewee F) for the AGM.

The above observations – poor preparation and discussion of petty issues by general shareholders in AGM debates, bribery of shareholders by the board, and stage-managed AGMs – correspond with evidence reported in other LDCs studies. According to Uddin and Choudhury (2008) listed firms in Bangladesh also stage-managed AGMs where some directors bribed a few individuals to shout down other shareholders deemed critical of the company leadership. Similarly, Adegbite et al. (2012) found that Nigerian listed firms’ AGMs were also stage-managed where the board and management of these firms offer ‘financial incentives/bribes’ to representatives of shareholder associations to avoid criticism



for poor performance, or win their support during the voting process. However, unlike Bangladesh and Nigeria where the CG regulators are required by law to observe the proceedings of listed firms' AGMs, the same does not apply in Kenya. This suggests that minority shareholders in Kenya may be at a very precarious position without a shareholders association to protect their interests, or a regulator observing how they are treated during the AGMs. Accordingly, this raises a question concerning how the interests of minority Kenyan shareholders are protected.

The discussion above shows how various institutional constraints affect Kenyan shareholders ability to participate in the AGMs process. For instance, the finding on shareholder bribery is unsurprising given the widespread culture of corruption in the country, with Kenya also ranked as one of the most corrupt countries in sub-Saharan Africa and globally (Transparency International, 2016). Moreover, the presence of many investors having modest education makes them vulnerable to exploitative directors and management, and also suggests that they may be unable to draft efficient contracts to reduce agency problems (Eisenhardt, 1989, Fama and Jensen, 1983). This findings demonstrate nonconformity between the assumptions underpinning the Anglo-American CG and the socio-cultural reality within LDCs (Ahunwan, 2002). The findings also expose a weakness of agency perspective as an abstract theory that has little connection with reality as it overlooks the environment which influences the observed principal-agent relationship (Cuevas-Rodríguez et al., 2012).

### **5.2.3 Minority shareholders treatment**

#### ***5.2.3.1 Principal-principal conflicts***

In addition to the principal-agent conflicts proposed by the agency theory (*e.g.* Fama and Jensen, 1983, Jensen and Meckling, 1976), evidence collected from this study suggests that the wealth of minority shareholders in Kenya is at further risk from frequent principal-principal conflicts. However, the nature of principal-principal conflicts within Kenyan listed

firms further extends from the form reported in literature, i.e. large/controlling shareholders against minority shareholders (Young et al., 2008, Lin and Chuang, 2011), to include severe conflicts amongst the large shareholders. Interviewee opinions sought were in accord with the archival data accessed, that the latter type of conflicts were as detrimental to minority shareholders fortunes as the former. This is unsurprising given that the ownership of Kenyan firms is heavily concentrated around large shareholders (see section 5.2.1 above) with potentially disparate interests/expectations. The evidence below demonstrates the two origins of principal-principal conflicts within Kenyan firms:

**Large/controlling shareholders vs Large/controlling shareholders – indirect conflicts:**

*...I must admit that large shareholders rather than help us to build good companies are turning out to be one of the regulator's biggest headache...we have blacklisted some of the large shareholders from sitting on boards of any listed company...but you find they will appoint a proxy and continue to advance their agendas...the large shareholders have also quite often instigated boardroom wars which have caused their companies huge losses... (Interviewee A)*

Another interviewee added:

*...I was the company secretary at [company name withheld] and we had a severe boardroom war going on between the major shareholders fighting for control of the company....that is the government, NHIF, and Lafarge...the war became worse with time and ended up playing out on the day of an AGM...it was well planned but I was not aware...I just realized that morning and you can't run away at that point...I however resigned after the AGM (Interviewee L).*

The following excerpts from two leading Kenyan dailies similarly underscore this problem:

*...the [large] shareholder fights [...] have seen the minority shareholders emerge the biggest losers (Business Daily, January 20, 2014).*

*Minority shareholders, holding a 6 per cent stake [...] claim that the major shareholders [...] intrigues at EAPCC have resulted in suspension of dividends to shareholder (Daily Nation, December 24, 2013).*

Whilst minority shareholders are only onlookers during conflicts pitting the large shareholders against each other, the evidence above suggests that the former bears huge losses from the actions of the latter. This is an interesting finding for this study since extant literature has reported principal-principal conflicts as only being in the form of large/controlling shareholders engaging in actions which directly undermine the welfare of minority shareholders (e.g. see Lin and Chuang, 2011, Young et al., 2008). However, the researcher argues that despite the harm borne by minority shareholders being a ‘collateral damage’, the consequences are dire for minority shareholders welfare.

The following quotes demonstrate the other form of principal-principal conflicts.

**Large/controlling shareholders vs minority shareholders – direct conflicts:**

*...one of the biggest CG challenges we have witnessed in this country is where the majority shareholders embezzle company resources...if you look at Uchumi when it nearly collapsed, the people who were taken to court for selling its land and buildings were the majority shareholders who also served as its directors... (Interviewee R)*

*...if you look at [firm name withheld], the majority shareholders were all doing business with that company without competitive tendering...Mr XXXX was a supplier of that company for a very long-time and it was established that he used to inflate the costs charged to that company causing it huge losses...in this country large shareholders don't just buy shares in order to get dividends, it is also to help them acquire influence in that firm and ensure the continuity of their associated businesses... (Interviewee B)*

The Kenyan financial press has also questioned majority shareholders activities as follows:

*...[some large shareholders have been loaning money to] companies.....These soft loans are structured in a way that ensures the majority shareholder(s) walk away with the lion's share of the company's free cash flow (in form of debt servicing and dividends) (Business Daily, July 3 2014).*

*The transaction, which is already proving controversial among some stakeholders, will see Mr XXXX issued with an additional 12 million shares at a premium Sh5 each compared to the current trading price of Sh4.30 per unit at the NSE.....Mr XXXX, who is also the chief executive of XXXX Kenya, said shareholders approved the plan last Friday during the company's AGM where it was presented as any other business...[A shareholder, whose shareholding risked erosion by 1.4] per cent after the conversion questioned the [related party] loans and their benefits to [the company and minority shareholders] (Business Daily, December 10 2015).*

This form of conflict – large/controlling shareholders vs minority shareholders – has previously been investigated in literature with its basis attributed to the prevalence of “family ownership and control, business group structures, and weak legal protection of minority shareholders within emerging and developing countries” (Young et al., 2008, p.196). Of these, familial ownership and weak legal protection have been identified in this thesis as prevailing within Kenyan firms, as shaped by Kenya's institutional reality (North, 1991).

The above evidence demonstrates the extent of principal-principal conflicts within Kenyan firms, and where minority shareholders end up as the biggest, eventual, losers. This evidence reveals a complex problem which is potentially difficult to solve. Unlike the principal-agent problem, which may be resolved by firing the aberrant managers (Jensen and Meckling, 1976, Fama, 1980), it is not easy to get rid of problematic large shareholders, even in cases where they are banned by the market regulator as they instead appoint proxies to advance their vested interests. Accordingly, agency theory fails to provide a solution to this type of CG problem, which is quite predominant in Kenya as demonstrated by the evidence above.

This not only reinforces the argument that agency theory provides a narrow view of firm CG problems (Eisenhardt, 1989, Shapiro, 2005, Wiseman et al., 2012, Filatotchev et al., 2013), but also the need to refine it, or, develop a new theory that addresses the complexity of CG problems manifested by LDCs firms.

#### **5.2.3.2 Disregard of minority shareholders voice**

Minority shareholders in Kenya were also viewed to endure disregard by various stakeholders including the board, the majority shareholders, and the government. This was opined as manifesting where minority shareholders voice is ignored during important corporate decisions hence undermining their rights, even without their immediate financial loss. This was reflected in interviewee responses as follows:

*... Majority shareholders invariably sit in the board...So there is a divide between shareholders...one shareholder group managing the company and another one that is excluded. My experience on this is that the voice of the minority has not been well articulated. The companies have been run by and largely for the large shareholders. I have attended many AGMs and normally the voice of the minority at best is, "oh we have heard!" Because the person chairing the board is representing one of the major shareholders. (Interviewee M)*

*...majority shareholders usually have more votes than even the many small shareholders present at the AGM...even if the small shareholders object to something, majority shareholders will have their way because of the many shares they hold...if you go to poll, they will surely win... (Interviewee R)*

These views are consistent with a press report, that:

*...a number of transactions involving listed firms have seemingly left out minority shareholders. A classical case in Kenya was the decision in 2012 by the board of directors of [firm name withheld] Ltd and controlling shareholders to dispose of a*

*major asset in the face of opposition by minority shareholders.* (Business Daily, July 3 2014)

There was consensus of opinion from all participants interviewed that minority shareholders may be ignored during decision making as majority of them lack sophistication and basic financial literacy, that is possessed by the other parties including the board of directors and majority shareholders. For example, one shareholder interviewed observed that:

*...the board and the big shareholders are quite elitist...they will hold investor briefings every time they are about to release the financial results of the company but they do not invite us the common shareholders...* (Interviewee G)

The above evidence reveals a deviation of practice from the Kenyan CG code's provision requiring listed firms to “*...promote and protect shareholders' rights [through] equitable terms of shareholders including the minority and foreign shareholders*”(Capital Markets Authority of Kenya, 2002, Provision 3.3, p.487). In this regard, Paredes (2005, p.34) argues that LDCs, such as Kenya, would benefit from a rules-based model of CG as opposed to the current principles-based arrangement; if LDCs are keen to “protect [minority] shareholder interests from abuses and mismanagement of directors and officers, [and] opportunism of controlling shareholders”. This is consistent with NIS prediction that formal rules generate isomorphic pressure for organisations to behave in a given manner (DiMaggio and Powell, 1983, Dacin, 1997).

Accordingly, another interviewee attributed this problem to low investor awareness and missing shareholder activism; with the latter lacking momentum due to lack of shareholder association. Besides, it was identified in section 5.1.4 of the previous chapter that Kenya's shareholder association collapsed shortly after establishment in 2002, and, no other shareholder lobby group has been in existence:

*...very few ordinary shareholders understand their rights...most shareholders are only bothered about dividends and bonuses...investor rights awareness is very poor amongst such shareholders and it is not helped by the lack of shareholder education...we need to empower the ordinary shareholders so that they are not exploited by the board or the large shareholders...there is also need to have a shareholders association which can help to build capacity and capability of the small shareholders... (Interviewee B).*

Consistent with the above statements, Adegbite (2015, p.324-325) also found “high level[s] of illiteracy in Nigeria, [as undermining best CG practices since] many small investors have limited capacity to make reasonable deductions from companies’ financial statements and accounts in order to inform their investment decisions”. Accordingly, firm decision makers may not be keen to listen from such shareholders owing to their unsophistication. Indeed, Amao and Amaeshi (2008, p.123) propose shareholder activism as a remedy against “marginalisation of shareholders in corporate democracy” and as a mechanism for “[increasing their] influence in corporate decision-making process”. The evidence in this subsection thus demonstrates that CG problems within Kenyan firms, and possibly other similar LDCs, do not originate only from conflicts between *principals vs agents* (Jensen and Meckling, 1976), and/or, *principals vs principals* (Young et al., 2008); but also from *agents-and-principals vs principals* as established from this study. This thus puts to question the ability of agency theory to explain CG within LDCs given its inaccurate prediction that CG problems exist only between principals and their agents (Eisenhardt, 1989, Jensen and Meckling, 1976).

#### **5.2.4 Summary: The Ownership Structure of Kenyan Firms**

This subsection presents a discussion of how the *Ownership Structure of Kenyan Firms*, a central pillar in the effective implementation of Anglo-American based CG, is constrained by various institutional weaknesses prevailing in Kenya; thus limiting the pillar’s capacity

to realise the intended functionality. The discussion is subdivided into three broad themes: nature of dominant owners, AGM administration and voting, and minority shareholders treatment. The analysis establishes that firm ownership in Kenya constitutes four broad forms: (a) foreign and/or local institutional investors; (b) familial shareholders; (c) the government; and (d) minority owners. Apart from minority shareholders, the other three types of ownerships dominate listed firms, with institutional shareholding perceived to be associated with desirable CG practices; followed by family, and government dominated firms respectively. Concerning AGM administration and attendance, the analysis finds that meetings are poorly attended by minority shareholders, with majority of them only interested in immediate gains, including the gifts provided during the AGM. The participation of minority shareholders is also little, due to the conspicuously missing investor sophistication. Furthermore, shareholder bribery and stage-managed AGMs also compromise the participation of minority shareholders in AGMs, thus leaving the board and large shareholders with excessive influence in corporate decision making. Finally, the analysis reveals the existence of two types of *principal-principal conflicts*, with one type being a *direct* conflict between large and minority shareholders; and the other an *indirect* conflict between large and minority shareholders, manifesting when large shareholders clash with other large shareholders. Some large shareholders also collaborate with the board in ignoring minority shareholders' interests, thus exhibiting another type of agency problem: *agents-and-principals vs principals*. This is a new addition to the two types of conflicts reported in literature between *principals vs agents*, and *principals vs principals*.

### **5.3 The Role Performed by Board of Directors in Kenyan Organisations**

In this section, the researcher provides a discussion about the manner in which the Kenyan contextual reality exerts itself on board processes of the listed firms; thereby, leading to a deviation of board CG practices, from those envisaged within the CG code. The ensuing analysis within this section provides theoretical interpretations of the data collected,



regarding how Kenyan boards perform their roles as espoused within the Kenyan CG framework, amidst an arguably peculiar institutional background. The analysis is organised around the following facets of optimal board effectiveness – board composition, characteristics, and process – as proposed by Zahra and Pearce II (1989), discussed in the literature review chapter.

### **5.3.1 Board composition**

#### **5.3.1.1 Diversity**

Board diversity/heterogeneity is argued to be an important attribute for enhancing the quality of a board, leading to improved effectiveness in the delivery of its duties, due to the advantage of complementarity of the weaknesses of the individual directors and richness of board discussions (Zahra and Pearce, 1989). Such diversity may emanate from inclusions of individuals from different genders, varying professional expertise, or even dissimilar cultural backgrounds.

The evidence gathered in this study indicates that a significant proportion of listed firms in Kenya lack diversity within their boards, suggesting, therefore, that their effectiveness may be compromised. Reasons for lack of diversity that might improve effectiveness of board function relate to gender representation, expectation of social justice for ethnic groups and regional considerations in constitutions of board.

Masculine culture which continues to aggrandize male dominance within boards as shown in the statements below:

*“A lot of boards’ still [exclude] women and this is one of the tenets of good governance... you [need to include women] to have a diversified and hence a dynamic board...bringing a different approach to problem solving and decision making... (Interviewee S)*

Another interviewee remarked:

*“We have 50:50 ratio of men vs woman in my board. That is the highest we have in the history of this country. Most boards are still dominated by men...with one or two women or none at all in many others...other companies just put one woman for the cameras (Interviewee J)*

The statements above show that many corporate boards are mostly male dominated. There was also consensus of opinion amongst the interviewees that the exclusion of women from boards was partly due to the prevalence of strong ‘male-network’ which also dominates the socio-economic sphere of Kenya. In traditional Kenyan societal setting women have had little access to formal education, as many girls are married-off at a tender age, thus limiting their participation within the formal economy (Chege and Fatuma, 2006).

Tribalism was another commonly reported constraint to boardroom diversity within Kenyan firms as indicated in the following statements:

*“...You find different boards to be enclaves of people from a ‘certain parts of Kenya’...these are people who grew up in the same village... or the networks may also sprout from the so called professional associations of people from the different parts of Kenya...” (Interviewee F)*

The statement above represents a widely held view among a number of interviewees, although some respondents were reluctant to discuss the tribal diversity of their boards. Nevertheless, this is understandable given the fact that tribalism, or conversations around this topic, is considered to be a sensitive issue in Kenya.

Another interviewee, however, remarked that, it gives some comfort to a tribe/community that they would not be exploited, if they saw a member of their tribe in the board of a company, particularly for manufacturing and mining companies whose operations are based in less cosmopolitan countryside areas. This view is represented as reflected below:

*“...we have 42 ethnic tribes in Kenya and it is impossible to have a director from each of those tribes but it is important to make sure there is at least a director from the community inhabiting in the area where your main operations are based to show those inhabitants you have someone who can articulate their interests...particularly if you are in the extraction or mining industry...” (Interviewee B)*

The above discussions show how local problems such as gender inequality which is perpetrated by traditional culture, and tribalism which arises from the multi-ethnic nature of Kenya’s demographic background and further complicated by historical suspicions, affects boardroom heterogeneity. Consistent with NIS predictions, this evidence shows how powerful informal institutions such as culture and the complexities of multi-ethnicity, prevail over the expectations of the Kenyan CG code (Rashid, 2011, Wanyama et al., 2009, North, 1991).

On further prodding, some respondents also admitted that their boards lacked diversity of skills, even where attempts to overcome the above two contextual problems – tribalism and gender inequality – have been made. This is illustrated in the excerpts below:

*...I worked as a CG consultant in one of the quoted companies and found their board to have 7 lawyers out of a total of nine directors...the remaining two were the CEO and the finance director...the person chairing the audit committee did not have adequate expertise in financial matters...that is a big problem... (Interviewee E)*

Another respondent noted:

*In our board we do not have a single engineer...however we are trying to see if we shall nominate someone with engineering expertise into the board... (Interviewee N)*

Too much focus on meeting the gender threshold and/or ethnic/regional representation – both of which are also espoused within Kenyan laws<sup>28</sup> – may create an impression of board diversity, yet it may compromise boards’ ability to benefit from diversity of skills of their board members which is the key expectation that underpins argument for diversity from resource dependence theory perspective (Zahra and Pearce II, 1989, Westphal and Zajac, 2013, Dalton et al., 2007).

The findings from this subsection – board diversity – suggest that achieving the optimal board diversity is potentially problematic in a context such as Kenya, where many factors need to be considered as opposed to just nominating individuals based on their professional background.

#### **5.3.1.2 Independence**

The independence of boards within Kenyan listed firms is the other area which has been found to be of concern in this study, as interviewee responses suggest that many boards lack the expected level of independence. As the evidence below illustrates, the constitution of corporate boards is shaped by the underlying local context, including the ownership structure of boards.

*“...In our board, we have 8 directors and half of them work for affiliated subsidiaries...3 of the 4 non-executive directors are working in companies which are owned by the majority shareholder...However, I do have some directors who are totally independent. One of them is actually a director at [CNW] – he is the chair of*

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<sup>28</sup> The Kenyan government has recently adopted various reforms aimed at promoting equality amongst all genders, and people from the diverse ethnic groups in order to foster harmony and address some of the historical injustices suffered by various sections of the Kenyan society (e.g. see ESAREY, K. H. 2013. Institutional Change: The impact of Kenya’s new constitution on the diversity of the public service sector. Available: [www.hbs.edu/faculty/conferences/2013-paulrlawrence/.../HGH\\_submission.pdf](http://www.hbs.edu/faculty/conferences/2013-paulrlawrence/.../HGH_submission.pdf), *ibid.*).

*the board. He is also the chair of the board at [CNW]. He is also a director in one of our sister companies but he is totally independent, in the sense that he is not an employee, or that he does not receive any salary/remuneration from the company. We have another director, and she is also a director at [CNW]. She is also a director at [CNW] – which is a sister company – but that came as a result of her being here, and also being good in her work. But she is also totally independent, she earns no salary from any of the companies related to our company” (Interviewee S)*

In the above statement, for instance, the interviewee narrated that half of their board members are also full-time employees of the company’s subsidiaries. Upon further prodding, this interviewee stated that the other half of the board was independent as they are “not [employed], nor receive salary from the company”. However, two of these directors were also holding directorships in other wholly-owned subsidiaries of this company. This finding evidences a grey area in the CG code as it potentially difficult to determine the degree of independence which such directors – serving in subsidiary companies – have, particularly noting that it is a family-controlled firm, as are a number of other Kenyan listed firms. This should be a matter of concern given Uddin and Choudhury (2008) finding from Bangladesh that directors serving in family-controlled firms were involved in tunnelling parent companies resources to privately-held subsidiaries at the expense of minority shareholders.

Another cause for the weak board independence is inadequate supervision which by failing to scrutinise the boardroom composition of the listed firms, leaves the companies with little regulatory pressure to worry about independence. This is shown in the evidence below:

*“...For board/director independence, there are no strict requirements. The CG [code] only states that a board should have 1/3 of its directors being independent, but on top of that it doesn’t say anything else...there is no guidance or requirement as to, for instance, how that should be done....so, if you are complying you report on it. If you are not complying, you keep quiet...You see sometimes companies provide*

*outright lies in their CG statement. No company will tell you that they have failed to comply with CG.” (Interviewee J)*

*“It is my job to do the CG statement but I have never been asked, “You’re saying you have got 10 independent directors, who are these people?” but perhaps if there was a procedure to have the CG reports audited, one can then be asked who the 10 independent directors are...in doing so they would ensure that the board is actually independent. Remember some companies just put directors’ names without photos or even a profile. I would expect the CMA to actively review audit reports of companies in order to ensure that director X whom I’m calling independent is actually independent – I have not seen that...” (Interviewee P)*

*“In case the CMA comes across a company which has not met the requirements for independence, what do they do? They write you a letter telling you that you need to improve your board independence. Then if you don’t comply, there is nothing much that the CMA can do. They can’t delist you...what the CMA can do best is to put a lot of heat on you to comply. They can certainly do that. But to be honest, if CMA came across a very nasty company that did not mind the public perception and things like that there’s nothing they will do...the failure by the CMA to be tough has created a perception in the corporate sector that board independence is not very critical within companies but just a good thing to do...” (Interviewee K)*

The interviewee statements above suggest that listed firms perceive the CMA to be an ineffectual regulator, a fact which explains the inattention towards board independence.

Indeed, this became more apparent in a follow-up interview where a CMA respondent remarked:

*“...the regulator has not been able to do much previously...but we are in the process of developing a new code which will be more detailed and will also allow us*

*to crack the whip on deviant firms...that the regulator has been unable to properly enforce the provisions of the current code since they are only guidelines...”*

(Interviewee A)

The response by Interviewee A above, further shows how regulatory laxity contributes to imperfect board structures among the listed firms, due to lack of active enforcement of the CG requirements. This finding suggests that there is no pressure for firms to pay attention to board independence while crafting a board; hence inadequate coercive isomorphism.

### **5.3.1.3 Nomination**

The nomination process of directors in various firms also exhibits another shortcoming that potentially compromises the quality of their boards, as well as ability to play meaningful leadership role as assumed within the CG code. From the evidence collected, these problems manifest in the selection and recruitment procedures adopted by firms:

*“...when it comes to recruitment the directors usually recommend their friends. Board positions should be advertised...it would be good to expose this process and this is currently lacking. There may be somebody who is very good in particular area whom you don’t know because they are based out of [Nairobi] ...nomination committees need adequate time, even if it is months, to get the right person...and justify every appointment...”* (Interviewee M)

*“Board appointments in this country are influenced by what tribe you come from and who the people sitting on a particular board come from...this may be unnoticeable to the general public because we are all deeply immersed in this problem but as someone who has worked in corporate Kenya all my life and also understands its boardroom intricacies, suitable candidates are occasionally overlooked because they come from the ‘wrong tribe’ (emphasis added)...any Kenyan will tell you that tribalism is a big problem in this country...”* (Interviewee F)

*“Almost all boards have what you call nominations committee, because it is a requirement by the CMA...but some of them are just rubberstamps...about 3 or 4 years ago I was serving in the board of one of the listed companies and our chair then brought one of his business associates and the nominations committee happily endorsed that person...so, having a nominations committee is one thing, but its members being able to effectively execute their roles is another...”* (Interviewee O)

The following statement, from a news report, further underscores the interviewee narratives above:

*“...managers are allowed to suggest names of cronies or friends from the old-boys network for nomination to the board making it a ‘yes outfit’ that is incapable of making quality decisions.”* (Business Daily, Business Daily, October 11, 2010)

From the evidence presented in this subsection, the failure to observe proper nomination practices appears to be a potential source of weakness in the configuration of various boards. For instance, although a scrutiny of listed firms’ annual reports indicates that all observed firms have a nomination(s) committee, the effectiveness with which such committees fulfil their CG mandate can therefore be questioned. This observation is informed by the evidence suggesting that nomination(s) committee serve as, acquiescing, rubber stamps for pre-decided individuals joining the board without subjecting them to a competitive recruitment process. Accordingly, many directors appointments appears to be based on favouritism rather than merit, suggesting that such firms possibly establish nominations committee to pay lip service; thus, as an attempt to gain legitimacy over efficiency.

### **5.3.2 Board characteristics**

This section discusses another overarching theme – board characteristics – which provides an understanding of how the attributes of board members affect the manner in which they perform their functions. The analysis focusses on three general areas including: age, values, and directors’ education and experience.



### 5.3.2.1 Directors age

Interviewee responses, which were also supported by annual reports information, showed that the average age of directors as being in the sixties. Interestingly, also, the board chairs in various firms tends to be older than that the average ages of the rest of the board members.

The statement below represents an interviewee response regarding the age of directors:

*“Not so long ago I was consulted to look at the CG structure of [CNW] ...and one of the things I found is that the youngest member of the board was the CEO in his 50s...all other directors were in their 60s and 70s with the average age for the whole board being 69 years...” (Interviewee M)*

Another respondent added that smaller-sized and family-controlled firms tend to have higher board-average-age compared to firms to the large firms, or those with non-familial owners as reflected in the statement below:

*“...CMA has put limit in terms of age for persons sitting on the board of a listed company...but this is more relevant to a big company...for many listed companies which were established by the controlling families, most have older members of those families serving on boards...and the founding patriarch would feel discriminated against based on age if you ask them to exit from the leadership of a company which he created...” (Interviewee D)*

The above statements reflect the general interviewee opinion that many boards have directors whose age exceeds, or is on the verge of, the maximum age stipulated by the CG code. A review of listed firms' annual reports also shows a director who continues to serve in the board of a bank since 1986, approximately 30 years, as well as being the board chair for the last 14 years. When prodded for further views concerning why some individuals continue to serve on their boards even at an advanced age, the interviewees narrated that shareholders do not have any problems with the age of those directors. This was unsurprising given the fact that senior members of society, within Kenyan traditions, are regarded as rich

sources of knowledge due to their experience which has been acquired overtime. Indeed, one interviewee emphasised that *‘an old man sitting on a stool can see far than a boy standing on top of a tree’*. This is consistent with Adu-Amoah et al. (2008) who also found that boards of Ghanaian firms comprised directors with advanced ages. However, their study only suggests that firms retain older directors due to a cultural requirement to treat elders with respect; and not necessarily for their expansive experience. There is, therefore, a need to ensure a balance between valuable past experience, and fresh energy to keep up with new developments with a continually changing market. In conclusion, the analysis in this section reveals how culture, an informal institution, prevails over the formal requirements of the CG code in Kenya.

#### **5.3.2.2 Directors’ malpractices**

From the interview discussions, an increasing tendency for directors to engage in corporate misconducts, as well as board complacency when such problems occur, was also evident. The statements below suggest that board malpractices manifest where directors engage in unlawful activities, or where the board attempts to cover up for the misdeeds of some of its members. This is indicated in the interviewee responses below:

*“...the current issues facing [CNW], whereby management set up shell companies that overbilled their company for delivery of goods and services, is a good example of how some boards engage in questionable practices to defraud their companies...”*

(Interviewee J)

*“...if you look at a company like [CNW], all those things which were discovered there had been ongoing for more than 20 years and the whole board could not have been without that knowledge...[the board] was hiding all those things from the auditors...a number of directors were also long time suppliers of [the same company] and the directors also had secret offshore accounts...the only reason why these issues came into the public attention was because of a disgruntled*

*director...without this whistle-blower I don't think [CNW] board's misconducts would have been discovered..." (Interviewee D)*

A representative from the CG regulator added:

*"...after our investigations, we have taken 6 former directors of [CNW] together with some senior managers who were found to have imported sugar to compete with their own company's brand...there are also reports that at times lorries would leave [the] Sugar factory destined for Nairobi and about 100 bags of sugar would disappear from a consignment...tons and tons of sugar was stolen by the [company's] leadership in full knowledge of the board totally bankrupting the company..."*  
(Interviewee A)

The statements above demonstrate some of the unlawful activities carried out by some members of the boards of listed firms; either with the full knowledge of, or through conniving with the board. Therefore, the findings above suggest that forming an ideal board should focus beyond the formal education and experience of the board nominees, but also their personal values. Perhaps the reason why directors may be able to perpetrate such malpractices, sometimes in the full knowledge of the board, is because they are accorded veil particularly where such boards may be controlled by family members, or the directors' associates considering the dominant board 'old-boy' network discussed in the preceding section.

#### **5.3.2.3 Education and experience**

It was established that directors in all listed firms have some formal education and training, an observation validated both through interview and archival data; however, poor mix of skills emerged as a major weakness for various boards. As illustrated in the interviewee responses below, a number of boards tend to have directors with similar expertise, or qualifications, thus limiting the scope and quality of board decisions due to potential deficiency of diverse opinions.

*“...despite being an engineering company in my board of 11 directors we have only one engineer, who also represents the government by virtue of his office...we are working to see how we can improve that...” (Interviewee N)*

Another interviewee added:

*“The biggest hindrance to professionalism within many boards is the problem of the old boys network where serving directors invite their friends and business associates to take up board positions...that way friendship supersedes [the relevant] experience or expertise...” (Interviewee B)*

On account of the statements above, the effectiveness of such boards – lacking a balance of skills – may be questioned, as they are potentially susceptible to narrow views due to their homogeneous experiences. Also, the key problem with poor match of board skills relative to a firm’s industry of operation, is the inability of such board to provide effective strategic direction to the firm (Zahra and Pearce Li, 1989, Zahra and Pearce Li, 1990). It is unsurprising to find boards with poor mix of skills, or even directors lacking relevant industry expertise, given that board appointments in Kenya are influenced by many local factors which triumph over the former, including: personal networks, efforts to achieve ethnic or gender balance, and nature of controlling shareholder i.e. government and family ownership.

### **5.3.3 Board process**

This section provides an analysis of how directors within various firms perform their board functions. Zahra and Pearce (1989) argues that decision making by boards involves a series of factors and considerations which determine a board’s effectiveness in the execution of its duties. Consequently, the discussion below explains how institutional factors within Kenya affects board processes of listed firms, focusing on: working harmony amongst directors, frequency of board meetings, and board evaluation.

### 5.3.3.1 Board consensus

Interviewee responses indicated that internal clashes among directors are not uncommon and sometimes such altercations persist for extended periods, resulting in boardroom fallouts. Accordingly, firms with significant government and/or family shareholdings were perceived as being particularly prone to boardroom disagreements, largely emanating from struggles to obtain control of the board. Also, acrimony between sponsor<sup>29</sup> directors and their endorsed colleagues was commonly cited as another challenge to board consensus, often resulting in severe boardroom disharmony. The interviewee accounts below illustrate how problems to board consensus arise:

*“...there has been a worrying trend of boardroom wars which have played out publicly in different companies...one of the leading problems is fights over board control, or fall out of certain individuals especially where director nomination was based on friendship and not merit...those who bring you to the board think that they own you and you cannot correct them...”* (Interviewee F)

*“...companies where there are competing majority shareholders usually suffer from continuous boardroom squabbles, which sometimes turn into fierce boardroom wars...most of the times these fights arise where directors associated with certain large shareholders compete for the board leadership...this causes divisions in the board where you also find rival camps concentrating a lot of energy in their fights rather than the company’s business...”* (Interviewee L)

A leading financial press also noted:

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<sup>29</sup> Sponsor directors in this context refers to directors who rally to have their friends or associates appointed to a board in which they serve.

*“Kenya has [...] a unique boardroom character that operates in an axis of two extremes...monolithic boards that do not encourage contrarian views but thrive in group-think, while on the opposing end are completely discordant boards where fights and public fallouts are the order of the day...the Kenyan public has recently been treated to some of the most dramatic fallouts in discordant boards.”* (Business Daily, Business Daily, October 11, 2010)

Similarly, the seriousness of this problem – persistent boardroom wars within Kenyan firms – is evident from the recent efforts of the government, through the Registrar of Companies, to introduce rules on board departures. As one interviewee recounted:

*“...there has been a number of incidences where some directors have been thrown out of boards when they are out of the country...or where the chairman had an issue with a director, that person would be kicked out of the board and then the board would rush to file at the registrar’s office that the director has resigned...many resignations until recently were not genuine and were as a result of some other directors attempting to throw someone they disliked out of the board... to prevent this, the registry introduced a requirement that a director has to swear an affidavit that s/he has wilfully decided to resign... you are supposed to file three things: (1) an affidavit; (2) the signed resignation letter; and (3) a board resolution where that resignation was discussed ad accepted...”* (Interviewee R)

The above evidence reveals three main issues which put to question the extent of board consensus within boards of Kenyan firms. Firstly, it highlights what appears to be a high frequency of boardroom disputes, more so noting the government’s eagerness to curb this problem. Secondly, the observed disputes further suggest that boards’ decision making processes may be constrained owing to lack of consensus. Thirdly, the source of these disputes seems to originate from the underlying institutional environment, including, fight for board control amongst the large shareholders and strained personal relationships.

Similarly, Adegbite (2010, p. 173) notes that “different business cultures and high ownership concentration especially in [listed] formerly family owned or “one-man” entities [contributes to] boardroom squabbles [in Nigeria]”. This discussion underscores how board processes are influenced by local country characteristics.

#### **5.3.3.2 Frequency of Board meetings**

The frequency of board sittings for the listed Kenyan firms is another potential pointer to how the board processes are influenced by the local country dynamics. Whilst the Kenyan CG code does not specify the number of times that a board should meet, there appears to be an uneven number of board meetings between different companies with more marked variations evident across various industrial sectors. Concerning board meetings, interviewee responses highlighted that:

*“...board meetings are determined by the nature and urgency of the topic that the board wants to discuss...there is ordinary and special or adhoc board meetings...ordinary meetings are usually planned in advance on fixed dates but adhoc meetings can be called when there is a problem or other important issues facing the company...our company normally holds four ordinary board meetings but the number of adhoc meetings varies from year to year...”* (Interviewee N)

Another interviewee expressed concerns that some boards have tendency to hold excessive number of meetings, arguably with some selfish motivations:

*“...some boards convene many unnecessary meetings and end up getting a lot of money from companies in form of sitting allowances...most of the meetings are unnecessary in my view and shareholders do not appear concerned about it...”*  
(Interviewee F)

This concern was reflected in a Kenyan financial publication, as follows:

*“[In 2012] for instance, commercial banks held an average 20 meetings save for KCB where directors had more meetings [about 40 meetings] ...Companies in the industrial and service sectors held fewer than 15 board sessions, watering the ground for those sitting in bank boards to generate outsized fees...while those serving in critical committees such as audit take home fatter pay cheques on the increased meetings.” (Business Daily, June 10 2012)*

Notwithstanding the frequency of board meetings appearing to be relatively lower in the recent years, two questions may be asked: (a) if the many meetings are necessary, and (b) whether they indeed enhance shareholders value. This is informed by the understanding that numerous board meetings would ideally enhance the monitoring role of boards; however, this may also escalate the monitoring costs thus reducing the gains made. Accordingly, this presents a potential area of academic interest to investigate the impact of the frequent board meetings on Kenyan firms’ performance. At the same time, and whilst the above evidence suggests that some boards may be attracted by financial incentives to hold additional meetings, it is also probable that this is warranted by the potentially volatile nature of Kenya’s economic environment. According to Paredes (2005) markets within LDCs, such as Kenya, are problematic and difficult to predict, presenting a need for boards to closely monitor any unexpected events.

#### **5.4 Stakeholder Impact in the governance of Kenyan Firms**

This section explains how various stakeholders, besides the shareholders and managers as conceptualised within agency theory, shape the implementation of CG in Kenya. These stakeholders have been mostly neglected within Anglo-American CG literature, and the little attempt to explain their role in CG portrays them as onlookers being impacted by firm actions which are largely outside their control. Notwithstanding, the ensuing analysis demonstrates that different non-shareholding stakeholders affect the implementation of the Kenyan CG code in two broad ways: as either enablers, or impediments to the effective implementation of the CG code.



#### 5.4.1 Stakeholders as facilitators in the CG process

The evidence discussed below suggests that stakeholders such as professionals working within firms (e.g. company secretaries, accountants, and auditors) are well situated to advance the CG implementation. These types of stakeholders are normally within the formal environment within which firms operate. For instance, a respondent from the CG regulator remarked that other bodies which also help to promote CG as noted below:

*“...key stakeholders apart from the regulator that have played a big role...include the private sector corporate governance trust, Kenya association of manufacturers (KAM), Federation of Kenya Employers (FKE), Institute of Bankers (IB), Kenya Private Sector Alliance (KEPSA), all these institutions are our partners in some aspects of good CG...”* (Interviewee A)

This interviewee narrated that various other industry associations such as the KAM, FKE, along with respective sectoral regulators such as the CBK, IRA collectively promote a strong CG environment. This is because of the additional standards required from various companies operating in different industries. Consistent with NIS insights, the expectations of the different associations and/or regulators may be interpreted as a source of coercive pressure for firms; thus, leading firms to behave in similar manner (Aguilera and Cuervo-Cazurra, 2004, Judge et al., 2010, Siddiqui, 2010). However, the researcher expects that firms which are in an actively regulated industry such as banks and insurance by CBK and IRA respectively, are likely to have better CG practices than firms' in other industry that observe only codes/standards set by associations such as KAM in the case of manufacturing and construction firms. This is because the regulatory requirements set by CBK and IRA, which are agencies of the government, are formal rules which attract punishment for non-compliance hence more coercive influence, as opposed to the less coercive codes or standards agreed with the industry associations.

Accordingly, interviewee responses highlighted that professionals such as company secretaries and accountants or finance officers within the firms act as important facilitators in the implementation of CG in Kenya as noted below:

*“...we work closely with the auditors to organize the financial affairs and health of the companies...Also, the company secretaries are the people who a number of them have a legal background, so they have a better understanding of CG requirements that most of us in the board do not have...”* (Interviewee O)

The functions of the company secretaries are shown, from the interviewee responses, to be a focal point of CG as they discharge various important CG responsibilities including writing board minutes, ensuring that board meetings and decisions are carried out according to CG regulations, as well as confirming boardroom changes. This is illustrated in the interviewee statements below:

*“... [CG code] require that company secretaries must be members of ICPSK. If you are in the institute, it is drumming CG into you, so you are expected to ensure your board plays by the rules. It is all being facilitating...”* (Interviewee I)

*“As the company secretary, I sit in all board meetings...the main board and our other three subsidiary companies and I do all their reports... every listed company is required to have a company secretary confirming [board] resignations. There has to be a stamp or signature of the company secretary on the resolution as well...”*  
(Interviewee S)

The above evidence may be interpreted as a suggestion that the role of company secretaries is the ‘nucleuses’ of CG within the boards of Kenyan firms. Indeed, from the AGMs attended the researcher noted that some company secretaries would be tasked with the role of reading the AGM agenda, whilst in other AGMs this would be done by the board chair. It is also interesting to note that while the board of directors is ideally supposed to look after

shareholders' interests, the companies' secretaries in the case of Kenya have a role to ensure that boards observe the CG code's provisions; subsequently, providing a form of self-regulation of CG within the board. This is an indication of the significance of company secretaries in the CG process. This appears consistent with stakeholder perspective that company secretaries are stake keepers for the stakeholders who include shareholders (Fassin, 2009; Fassin, 2010). According to Fassin (2009, p.121-122) stake keepers "controls and signals, as a gatekeeper does [and their] actions find their expression in laws, norms, code, analyses, and in publications".

The findings above are also consistent with NIS prediction that professionals working within firms serve as sources of normative influence because of the similarity of their functions, which are governed by the same professional standards. The centrality of company secretaries in the CG process is perhaps, therefore, the reason why the Kenyan CG code requires the company secretaries of all listed firms to be qualified members of the ICPSK. ICPSK, thus, as the professional body of company secretaries in Kenya has a significant mandate in ensuring that its members are adequately trained, and continue to follow the institute's prescribed code of professional practice. Effectiveness of this body has been questioned in the preceding chapter including the quality of training provided in the various Kenyan colleges. In addition, company secretaries occupy a powerful position within company boards in Kenya, but they cannot be removed by shareholders in case they fail to implement their mandates effectively. This view is informed by the fact that company secretaries unlike the other members of the board, or even other stake keepers such as auditors, are not elected by shareholders into their positions.

Finally, it was reported by respondents that the presence of international companies in Kenya had positive impact on implementing CG in domestic companies, consequently impacting positively on the Kenyan CG environment as noted below:

*“...another issue which encourages good CG in the [NSE] is the fact that many of the listed companies, especially the blue chips, are [subsidiaries] of international companies...look at [CNW1or CNW2] ...” (Interviewee G)*

*“...the multinational companies which we have in Kenya also set a good precedence on CG. We have never witnessed these companies having CG dramas on TV...directors fighting or anything of that manner...also anything new that comes into [the corporate sector] usually begins with companies which have international links, look at ISO certification for instance before it became a craze for the local companies...” (Interviewee C)*

The two interviewee statements above illustrate another commonly agreed opinion that highlighted the entry of international companies which traditionally comprised firms from Western countries – i.e. UK and USA – in Kenya, as agents of Anglo-American CG practices. There was collective perception among the respondents that foreign firms tend to have better CG practices compared to the domestic Kenyan firms. This evidence suggests that listed firms which are subsidiaries of foreign/western parent companies are viewed as ideal examples of firms with good CG practices. This finding is consistent with NIS theory which suggests that some organisations may model their corporate structures, which in this case include compliance with CG guidelines as well as observance of acceptable CG practices, along those of their perceived successful/legitimate peers – mimetic isomorphism (Greenwood et al., 2008, p.83). Mimetic isomorphism is argued to be mainly evident where firms are faced with uncertainty, or little understood environments (Powell and DiMaggio, 1991). This may be taken to mean that domestic Kenyan firms needing capital, and given their relative inexperience with the operations of capital markets which are quite recent, may view foreign companies as sources of inspiration particularly if the former desired to appeal to foreign investors. However, the increasing cooperation between China and Kenya has led to the entry of Chinese companies into the Kenyan corporate sector and it would therefore

be interesting to see how these new development impacts on the existing CG practices. This is considering that majority of foreign-listed firms in Kenya are mainly western companies. Also, although no Chinese company is listed in the stock exchange, it may be interesting to see if Kenyan firms' managers would be keen to model their firms along the new Chinese business styles, as well as the CG implications that such actions may have.

#### **5.4.2 Stakeholders as impediments in the CG process**

The discussion within this subsection explains how other stakeholders shape the CG process in Kenya. As informed by interviewee responses, the ensuing analysis establishes that certain stakeholders' actions and/or demands compel firms to deviate from the expected CG process in order to avoid conflicts with their stakeholders. For instance, there was a widely-held perception that the political class perpetrates political patronage into the corporate sectors, a factor that was associated with increased tendency for corporate corruption. As narrated by interviewees, firms which conduct business with the government were more likely to engage in questionable practices for fear of losing out business to their competitors as noted below:

*“...the challenge as I had earlier mentioned is corruption. There's the hand of the government...if you want to supply goods to the government you cannot win a tender unless you bribe the procurement officers...by the time you are being paid the same person will be waiting for [a portion of your payment] before s/he can release your cheques...that to me is one way where you are forced to participate in it in order to survive...”* (Interviewee I)

Indeed, the magnitude of this problem within Kenya's corporate sector is reflected in a recent presidential speech as follows:

*“...every company seeking from now henceforth seeking to work with government...will have to sign an approved Business code of ethics domiciled in the public procurement authority...any business that fails to comply with the code will be disqualified from doing business with the government for a period of not less than*

*five years...the disqualification will not only apply to the business but also its directors...*” (Presidential speech, November 23 2015)

The above statement statements indicate a complex business environment in Kenya where firms are compelled to engage in poor CG practices, and as a result give in to the demands of their clients in order to maintain business relationship. Perhaps these problems may be avoided if the government introduces stiff penalties for individuals found engaging in bribery to attain business. In addition, another possible way to curtail such problems may be to computerise the government procurement systems in order to enhance their transparency by allowing easy auditing of government procurements. Besides being detrimental to good CG practices, there is also a likelihood that the tendency for firms to bribe in order to win business could legitimise the vice, eventually leading to a sub-culture where such actions are seen as normal. According to NIS prediction, culturally-derived behaviour can also serve as a source of coercive isomorphism hence leading to commonalities in organisational behaviour (Powell and DiMaggio, 1991).

On the other hand, communities inhabiting areas where various firms’ operations are based, were noted as having significant implications on certain firms’ decisions as well as CG practices as follows:

*“...in certain parts of Kenya we have seen the [local communities] running to the road with placards and sometimes stoning vehicles or damaging property...[however] what might appear like lawlessness or interference with company activities by the community is actually their way of defending their interests...for example safeguarding their ancestral land where they know their case may be manipulated if they take it to court...perhaps owing to the fact that due process of the law is [sometimes] rarely followed...”* (Interviewee O)

The statement above represents one of the ways communities living near firms’ impact on the latter’s affairs. However, such actions have a potentially adverse impact on the CG

process, as firms may be distracted by the threats of such stakeholders and hence fail to pay enough attention to the shareholders welfare. This finding illustrates a type of coercive isomorphism exerted by stakeholders – communities – and which acts as a hindrance to the effective implementation of the provisions of the CG code (Powell and DiMaggio, 1991). An interesting observation from the interviewee statement above, is the perceived objective of the communities ‘lawless behaviour as a way of defending their interests’ which the researcher assumes to be an indication that such groups might have little faith in the judicial systems in the country. This finding is unsurprising given the weak legal environment in Kenya suffering from problems such as corruption, and abuse of court processes – as discussed in chapter 5 of this thesis – hence explaining the apparent reluctance of such stakeholders to go to court, and instead using threats or actual violence to administer their preferred form of justice. This is an example of how failures within the formal institutional environment may give rise to informal intuitions (Zenger et al., 2001).

Moreover, other constraints within Kenya’s contextual background such as high poverty and unemployment levels were also viewed as contributing stakeholder unrest. This subsequently results in strained relations between firms and such stakeholders, and eventually impacts on the CG practices of affected firms. The interviewee excerpt below illustrates how problems within the institutional environment trigger stakeholders’ issues:

*“...In one of the companies which I am a director we have to constantly deal with a charged local community...the company deals with limestone mining and the local community gives us more headache than even the shareholders...about two years ago they had threatened to damage company property if they are not given jobs...what would you do in such case and you cannot employ a whole village...”*

(Interviewee K)

The statement above indicates expectations by some local communities that firms operating within their locality should uplift lives. As explained in Chapter five, it is not unusual for

companies to take up some responsibilities – usually performed by the government – to uplift the lives of the people within the areas where such firms operate. This may include provision of clean drinking water and/or electricity, constructing hospitals and schools, paying school fees for bright but disadvantaged children from the locality, and provision of security and employment (NTV Kenya, 2012; NTV Kenya, 2013). Therefore, the interviewee statement above is unsurprising as local communities in Kenya have a tradition of expecting business firms to fill in the voids left by the government. According to NIS theory, such expectations then become powerful informal institutions over time – coercive isomorphism – providing firms with social legitimacy and enhanced survival prospects (Powell and DiMaggio, 1991). In connection with this, it might be interpreted to mean that these informal institutions are largely oriented towards stakeholders who have no shares in the company. Therefore, this potentially puts Kenyan firms in a conflicting situation between the objective of maximising shareholders wealth as required within the CG code, and the culturally-constructed expectations about the firms' duty of providing solutions to societal challenges which are unique to LDCs. This explanation suggests that an exclusively shareholder-focussed governance model, such as the Kenyan CG code, is incompatible with the institutional reality of LDCs.

## **5.5 The Transparency of the Kenyan Corporate Governance Process**

Poor transparency and insufficient disclosure of firm activities have been argued in literature as major hindrances towards good CG. Firm managers can exploit the ensuing information obscurity to perpetrate misdeeds including misappropriation of firm resources, or underperforming on their jobs, leading to erosion of shareholders wealth. High disclosure levels are essential to promoting transparency within a CG process and to minimise the problem of information asymmetry. This consideration makes disclosure a critical pillar to the success of any CG system. Nevertheless, the analysis below finds certain characteristics of Kenya's institutional environment to be impediments of effective CG disclosure; thus,



putting to question the ability of this pillar to support the applicability of the CG code. The researcher wishes to emphasise that the discussion in this section is by no means a measure of CG disclosure for Kenyan firms, but rather an explanation of the institutional factors which constrain disclosure of corporate information and financial transparency.

### **5.5.1 Financial transparency and auditing**

There was consensus of interviewee observations that a number of listed firms have been implicated in financial misreporting, such as exaggeration of revenues, under-declaration of losses, and misrepresentation of corporate assets. As the evidence below shows, this usually involves deliberate and concerted efforts between various corporate officers and their auditors:

*...You have the big four auditing firms here which are also found in other countries...however, the issue which brings the difference in the work which they do is the environment in which they operate in...I don't believe that what we have seen here has never happened elsewhere in the world...in fact, the Andersen case is not different from what we have witnessed here in Kenya. The only difference is that maybe we see more of these cases than they reoccur elsewhere like the developed countries... (Interviewee M)*

The statement above represents the sentiments of other interviewees that the biggest auditing companies in Kenya have at some point been involved in audit misconduct, where they aided company executives to falsify corporate reports. As further evidence suggests this problem persists across Kenyan corporate sector, and usually involves collaborations between corporate insiders – such as the accountants preparing the financial reports in full knowledge of the management – as well as the auditing firms. This is evident from the results of an EY report which upon surveying 100 Kenyan managers stated that:

*“90% of the managers perceived bribery/corrupt practices happen widely in business [...] 23% agreed that at least one of these three things happened within*

*their firm: (A) Revenues being recorded before they should to meet short-term financial targets; (B) Customers being required to buy unnecessary stock to meet short-term financial targets; (C) Underreporting of costs incurred to meet short-term financial targets...41% Companies often report financial performance better than it is” (EY, 2015, page 5-12).*

One potential drawback of this report is that it does not explain the nature of firms included in the survey, including how many listed firms are involved, or what industrial sectors they operate in. The report also fails to elucidate the reasons prompting Kenyan firms to engage in these misconducts. Notwithstanding, a leading financial daily further illuminated the extent of financial misreporting in Kenya as follows:

*“ICPAK [...] summoned chief finance officers to discuss mounting cases of book-cooking, amid a string of allegations of professional misconduct by audit firms”*  
(Business Daily, December 9 2015).

Also, information from the ICPAK’s website also shows that the accountancy body *“dealt with over 20 disciplinary issues”* involving ‘cooked books’ within a period of two years to 2015 (ICPAK website).

The evidence above demonstrates how financial transparency is hindered by various factors emanating from Kenya’s institutional environment. Firstly, the extent of this problem puts to question the level of professionalism among the accounting profession in Kenya, as well as the effectiveness of the accountant’s body in ensuring accountants and auditors adherence with the code of conduct governing their professions. Similarly, Siddiqui (2010) finds that accountants and auditors in Bangladesh flout ‘professional ethics’ a fact the writer attributes to ineffective supervision by the accountancy body. Ineffective regulation, thus, opens room for professional impropriety, and makes it difficult to predict industry behaviour. According to NIS theory, professions such as accountancy are predicted to lead to uniformity of standards of desired organisational behaviour amongst their members and the organisations

in which they work for – normative isomorphism (Powell and DiMaggio, 1983). Nonetheless, the findings above suggest that the accountancy profession in Kenya is unable to apply normative change within the corporate sector, hence diminishing its role in buttressing the effective implementation of CG.

Secondly, the accountants' body has also cited corruption to be another major hindrance to financial accountability in Kenya. As a respondent, *"corrupt individuals do not spare anything in ensuring that they leave no trail including bribing the accountants of various firms to cover their actions"* (Interviewee K). In addition, the CEO of the accountants' body was recently quoted saying: *"There is a lot of corruption in the private sector...It's a reflection of Kenyan society"* (Business Daily, December 9 2015). This evidence suggests that corruption is a hindrance to financial accountability in Kenya. This is unsurprising given that corruption is extremely rampant in Kenya, where it is noted to permeate all sectors of the economy. Indeed, Kenya ranks as one of the most corrupt countries in Africa according to the Transparency International's corruption perception index.

## **5.6 Chapter Conclusion and Summary**

This section provides a concluding summary of chapter five, which analyses factors which influence how the Kenyan CG code has been implemented. The chapter is divided into seven sections. The first section presents introductory information of chapter six, while the next five sections discuss evidence concerning the institutional factors which influence CG implementation within Kenya, and subsequently this concluding section. The ensuing discussion summarises the main findings reached from the analysis of data provided in sections 5.1 to 5.5.

Regarding the first CG pillar – legal and regulatory framework – the analysis established that various inefficiencies emanating from Kenya's institutional environment constrain its ability to effectively support the CG implementation process. For instance, the companies' registry was found to lack basic resources such as automation of corporate filings, thus

hampering its ability to ensure firms compliance with the basic company statutes. Also, the CMA which is also the primary CG overseer was found to be susceptible to political interference, as it relies on government for funding, while its leadership is also appointed by the minister for finance. The findings further show that there are multiple regulatory bodies within the corporate sector. Accordingly, this subjects firms to a complex regulatory web including, conflicting regulatory requirements. These weaknesses were found to hinder the legal and regulatory pillar from achieving meaningful efficiency necessary to ensure effective implementation of Kenya's CG code. Accordingly and consistent with new institutional sociology insights, the researcher concludes that the legal and regulatory CG pillar within Kenya is unable to exert sufficient influence – coercive isomorphic pressure – essential to maintain effective CG standards (DiMaggio and Powell, 1983, Dacin, 1997). Moreover, the findings reached in this chapter's analysis suggest that shareholders rights may be difficult to safeguard within an inefficient common law jurisdiction, relative to an efficient civil law environment.

Secondly, the analysis found various weaknesses as impeding the ability of the second CG pillar – ownership pattern of Kenyan firms – to support effective CG implementation. For instance, the concentrated ownership pattern of Kenyan firms was found to be a contributor to CG challenges, including: poor minority shareholder treatment and boardroom conflicts. The prevalence of concentrated ownership suggests that majority shareholders can appoint themselves or their proxies to board positions, while minority shareholders are unlikely to have the capacity to do the same. This therefore challenges agency theory's assumption that control and ownership of public firms is always separate (Jensen and Meckling, 1976, Fama and Jensen, 1983). Accordingly, the nature of principal-principal conflicts assumes two forms: (a) conflicts between majority and minority shareholders and (b) conflicts amongst majority shareholders. Also, there is very little participation of minority shareholders in firm decision making as many of them fail to attend AGM discussions. Lastly, the administration

of AGMs has been questioned due to evidence suggesting that some shareholders are compromised by boards to manipulate AGM proceedings, while other AGMs potentially proceed without the requisite quorum. These findings contradict with agency theory assumptions, including: (a) the prediction that shareholders are widely dispersed, and (b) that CG problems only arise from agency relationships – between managers and shareholders (Jensen and Meckling, 1976, Fama, 1980, Fama and Jensen, 1983, Shapiro, 2005). This evidence is a potential contribution to agency theory, to enable it to reflect the nature of CG within an LDC context such as Kenya.

Thirdly, the findings showed that various institutional constraints affect the pillar of the board of directors. For instance, gender and tribal diversity are found to supersede skills diversity in the composition of various boards. The findings further show an incestuous nature of boards owing to the presence of closed network of individuals serving across different boards, and at the same time raising questions about the independence of such boards. Also given the concentrated ownership of Kenyan firms, the analysis finds frequent board conflicts as another CG concern arising where majority shareholders compete for the board leadership. This presents a challenge for board harmony and consequently the effective functioning of boards within the affected firms. Remarkably, the analysis finds the frequency of board meetings to vary significantly both within and across industries. For instance, in one firm, the board was found to have held four and forty board meetings within two successive years. This raises questions concerning the irregular board meetings, including the likelihood of excessive monitoring costs hence escalating agency costs. It also raises an interesting consideration regarding what level of monitoring costs may be counterproductive to shareholder wealth.

Fourthly, findings concerning stakeholder relations, the fourth CG pillar, indicate that various stakeholders, besides managers and shareholders, wield considerable influence on firms CG activities. The first category of such stakeholders performs a facilitation role, and

includes company secretaries, accountants and auditors who work within firms to ensure they follow the CG guidelines. Other enabling stakeholders comprise bodies such as PSCGT, IOD and KEPSA, which play an active role aimed at promoting effective and transparent corporate sector. Also, industry regulators including CBK and the IRA, perform important facilitation role in the implementation of CG. According to stakeholder theory, such stakeholder constituencies play important roles in promoting firm transparency, consequently boosting CG practices within firms (Fassin, 2009, Fassin, 2010, Miles, 2012). Yet, another category of stakeholders is found to impede effective implementation of the Kenyan CG code. This includes the political class's interference with corporate sector operations, which exacerbates political patronage and likelihood of corporate corruption. Also, some communities occasionally engage in acts of lawlessness with a view to manipulating firms to allocate them a share of firm resources. Moreover, analysis showed that firms also feel obliged to follow stakeholders' wishes while making crucial firm decisions, including board and other senior appointments. The actions of these stakeholders, which originate from the underlying political and social institutions in Kenya, are found to compel firms into deviating from the guidelines of the CG code in order to avoid losing their social legitimacy. This demonstrates a source of coercive isomorphism arising from socio-cultural influences compelling firms to pay attention to the wishes of their communities – an informal institutional arrangement (Scott, 2001, Dacin et al., 2002).

Finally, the analysis shows that transparency of the Kenyan CG process is constrained by various challenges emanating from the institutional environment. One such finding shows that various firms have been involved in deliberate financial misreporting, where accountants and auditors collude to exaggerate revenues, or under declare losses. Such misconducts are found to be thriving despite the presence of a professional accountancy body. This may be interpreted to mean that the accountants' body in Kenya, ICPAK, is unable to ensure compliance of its members with ICPAKs code of conduct. The inability of

ICPAK to control the conduct of accountants contradicts with NIS prediction that professional bodies serve as a source of normative isomorphic pressure for firms (DiMaggio and Powell, 1983, Scott, 2001, Greenwood et al., 2002). Besides, the analysis finds the rampant corruption in Kenya to permeate the corporate sector, subsequently constraining the transparency of the CG process since acts of corruption are often concealed to avoid leaving trail. These findings suggest that information asymmetry poses a significant challenge to the Kenyan CG process, thus putting to question the applicability of the Anglo-American CG code within such an environment. A recurring feeling by the researcher was that the widespread corruption in Kenya may gradually become institutionalised (Scott, 2001), suggesting that various CG players may partake in it subsequently hampering the CG progress within the country.

The discussion in this chapter addresses the second subsidiary question. It sought to explain the factors which influence the way the Kenyan CG code is implemented within the constraints of Kenya's institutional environment. This discussion is structured along the five CG pillars – theoretical framework – developed in this study. The findings reached show that there are institutional weaknesses emanating from Kenya's country background, thus weakening or negating each CG pillar's ability to support effective CG implementation. This analysis also finds discrepancies between various assumptions of agency theory and new institutional sociology, and the evidence reached from examined data.

## **Chapter 6 – Summary of Findings, Discussion and Conclusion**

### **6.0 Introduction**

This chapter concludes the current PhD study. It summarises the argument presented in the previous chapters, whilst laying emphasis on the findings drawn from the data analysed, with the aim of showing how the objectives of this thesis have been achieved. Accordingly, section 6.1 below provides a general overview of the thesis, outlining the objectives and key outcomes of each chapter. Section 6.2 explains the main findings reached in this study and also presents answers to the research questions set out in chapter one. Section 6.3 discusses the implications of the findings from this research towards advancement of CG theory, and more specifically CG debate within LDCs, as well as in policy formulation. Section 6.4 acknowledges the limitations encountered in executing this study, while section 6.5 suggests areas and direction for future research. Finally, section 6.6 provides a concluding summary of this chapter.

### **6.1 Summary of the Thesis**

To begin with, **Chapter 1** presents an introduction to the underlying argument in this study – investigating the applicability of Anglo-American CG model within Kenya’s corporate sector. In this regard, the chapter explains the motivation for this research noting that CG codes within advanced economies and LDCs tend to show a degree of similarity, however actual CG practices between the two contexts are markedly different. Extant evidence suggests that LDCs still experience CG problems despite the adoption of western-originated CG codes, which have worked relatively well within the advanced economies. The persistence of poor CG practices within LDCs, therefore, suggests that the CG codes in use are potentially ineffective in dealing with the nature of CG problems prevailing within these countries (Soobaroyen and Mahadeo, 2008, Tsamenyi and Uddin, 2008, Uddin and Choudhury, 2008, Wanyama et al., 2009, Mangena et al., 2012, Samaha et al., 2012). This availed an interesting scope for this study. Moreover, the other incentives for this study



include the limited quantity of CG research focussing on LDCs contexts, as well as a shortage of qualitative studies in CG notwithstanding the ambiguity resulting from quantitative studies which have reported mixed results (Soobaroyen and Mahadeo, 2012, Adegbite, 2015). The research questions guiding this study are presented in the initial chapter. These research questions are also restated in section 7.2 of this chapter.

**Chapter 2** provides a critical review of extant literature within the purview of this study. It begins by discussing the concept of CG, including the general definition of CG, along with how CG is interpreted from the perspectives of the three theories adopted in this study – agency theory, stakeholder theory and new institutional sociological theory. Furthermore, a discussion of the Anglo-American CG model is provided including an explanation of its main features. Secondly, a review of literature on CG in Africa and other LDCs is provided, where the literature review discussion is organised into five themes which emerged from the reading of literature. The five themes include: (a) legal and regulatory framework; (b) ownership structures and shareholders rights; (c) boards of directors; (d) stakeholder relations; and (e) disclosure and financial transparency. Additionally, a summarised table of the key studies reviewed in the literature discussion is provided. Thirdly, the limitations and gaps identified from the literature reviewed are also highlighted. Fourthly, the implications of the gaps and limitations within extant literature on this study's research questions and methodology are discussed. Fifthly, a discussion of the three theories adopted in this study is provided, including their assumptions and shortcomings. Finally, the implications of these multiple theories for the research questions and methodology are highlighted. A theoretical framework depicting five areas for understanding the practice of CG in Kenya, is also developed using concepts that emerged from the literature reviewed.

**Chapter 3** provides an explanation of Kenya's country context. The chapter begins by describing the country profile comprising the social context, the general economic background of Kenya, as well as the legal and political environment. Subsequently, chapter

four outlines the various statutes underpinning the CG landscape in Kenya. These include the Companies Act (Chapter 486, Laws of Kenya), NSE listing rules, prudential regulations for financial companies, ICPAK standards for the Kenyan accountancy and auditing professions, and the Kenyan CG code. In addition, an explanation of factors which influenced the development of Kenya's CG code is provided. This includes discussion regarding chronology of events which led to the emergence of the current code of CG practices in Kenya. Chapter three further provides a comparative analysis of Kenya's CG code with the UK's combined code. The choice of the UK's combined code is intended to provide a comparative assessment between Kenya's CG code and a unified code in use elsewhere in the world. This is because Kenya's CG code was inspired by previous UK CG codes including the Cadbury's code.

**Chapter 4** provides the methodological discussion. It begins by explaining the research design followed in executing this study, including reasons for adopting a qualitative methodology. Secondly, the chapter reviews the philosophical foundations underlying academic research with the aim of explaining the rationale behind the choice of subjectivist ontology and constructionist epistemology. Thirdly, this study's approach to data analysis is discussed where the choices of thematic analysis and content analysis for analysing interviews and documentary data respectively, are justified. Fourthly, the sampling strategy utilised in this study is explained. The sampling strategy initially began by reviewing annual reports to ensure that firms selected for interviews represented different ownership patterns, including domestic and foreign shareholders, government control, and family owners. This was then followed by purposive sampling for the interview phase. Fifthly, a discussion of the data collection methods used in this study is provided. For collecting the interview (primary) data, in-depth semi-structured interviews and field observations were carried out. On the other hand, secondary data was collected using archival documents and organisational websites. Finally, the ethical considerations guiding the conduct of this research are outlined.

**Chapter 5** presents an analysis of data with a view to understand how and in what ways Kenya's institutional environment constrains the actions of CG actors, subsequently influencing how the CG code is implemented. The discussion in this chapter is principally informed by interviewees' accounts, as captured by the interview data, and further corroborated through archival data. Chapter five is organised into five main sections, excluding the introduction and conclusion sections. These five data analysis sections are also structured around the five CG themes identified from the literature discussion, i.e.: (a) the legal and regulatory environment within Kenya; (b) ownership structure of Kenyan firms; (c) role performed by board of directors; (d) firms relations with stakeholders; and (e) the transparency of the Kenyan CG process. However, the five sections further contain subsections which signify the key themes which emerged after analysing the interview data as follows: (i) multiplicity of regulation and regulator conflicts, (ii) inefficiencies of regulatory bodies (legal and regulatory environment); (i) nature of dominant shareholders, (ii) AGM administration and voting, (iii) minority shareholders treatment (ownership structure of Kenyan firms); (i) board composition, (ii) board characteristics, (iii) board process, (board of directors); (i) stakeholders as facilitators, (ii) stakeholders as impediments to CG (stakeholder relations); (i) financial transparency and auditing, (ii) communication with shareholders (transparency of the Kenyan CG process). The insights gained from the data discussed in chapter five have also informed the development of the theoretical framework provided in section 2.4 of this thesis.

**Chapter 6** – the current chapter – forms the final chapter for this study. It draws the thesis's conclusion highlighting the various issues addressed within each of the chapters constituting this study. Chapter six also provides the main findings reached in this study and explains how they address the research questions pursued in the present study. Moreover, a discussion about what this study's findings mean for both theory and practice is provided. Lastly, the limitations of this thesis along with, directions for future research are explained in the present chapter.

## 6.2 Main findings

This section provides a discussion of the main findings reached in the present study. The section explains how the findings address the issues identified from the critique of literature (see chapter 2), as reflected in the research questions formulated at the beginning of this study (see chapter 1). In this regard, the ensuing discussion explains how the predetermined objective of this study – investigating the applicability of the Anglo-American CG model within Kenya – has been fulfilled. To achieve this research objective, a leading research question seeking to understand the practice of CG in Kenya was formulated. Correspondingly, to address the main research question effectively two further subsidiary questions were developed. These research questions, which have guided the present study, are outlined below:

Main research question:      What factors influence the practice of CG in Kenya?

Research sub-question 1:      What factors influenced the development of the Kenyan CG code?

Research sub-question 2:      What factors influence the implementation of Kenyan CG code within the corporate sector?

To comprehensively understand the applicability of Kenya's (Anglo-American styled) CG code, the study investigated the manner in which the Kenyan CG code is practiced. Accordingly, the investigation was narrowed down into two key areas. The initial task involved conducting an evolutionary analysis of Kenya's CG code in order to understand the range of influences which lead to its emergence. The next task involved an investigation concerning how the Kenyan CG code has been implemented within the Kenyan corporate sector. To achieve this, this thesis examined the connection between the institutional environment within Kenya and the country's CG code. This analysis focussed on the five CG pillars mentioned above, which are argued in the present study as being key areas upon which Kenya's CG code is practiced.

### **6.2.1 What factors influenced the development of the Kenyan corporate governance code?**

This section discusses the main findings pertaining to the first sub-question. These findings are drawn mainly from discussion provided in chapter 3 of this study. To answer the above research question, the analysis of archival data established that the emergence of the Kenyan CG code was driven both by local and foreign factors. Accordingly, the process which culminated in the Kenyan CG code began during the 1980s when Kenya's economy experienced severe economic problems leading to intervention by the Bretton Woods institutions (Were et al., 2006). The latter found a large number of inefficient government-owned firms as one of the areas where massive public resources were being lost resulting in fiscal challenges. The IMF then recommended the privatisation of non-sensitive government-owned firms including banks which were severely affected owing to mismanagement and/or interference from the political elite. Privatisation was expected to raise money for the government, to assist in reducing its fiscal deficit, as well as professionalising the management of the targeted firms (Were et al., 2006, Mwaura, 2007). However, as Kenya did not have a capital market by then, efforts were made to establish a stock exchange market in 1991 through which the government could sell the identified firms to the public. Further support was availed in designing a corporate regulatory framework to govern activities within the capital market. During this time, Kenya lacked both financial and technical capacity to design the capital market regulations and hence relied on foreign support from various organisations including USAID, IFC, IMF and the World Bank (The Office of Economic and Institutional Reform, 1994, NSE website, 2015, CMA website, 2015). Notably, all these organisations are Western based and it is unsurprising therefore that the capital market framework that they assisted in establishing would heavily borrow from the West.

The privatisation process resulted in the stock exchange market being dominated by firms which had significant government control. Moreover, many of the listed firms were facing imminent failure since direct funding by the national treasury was no longer available. In addition, the government was also undergoing fiscal difficulties. During this time, a group of local players – including ICPAK, CMA, NSE, and various corporate executives – began searching for a solution to the then prevailing CG problems facing the corporate sector. However, discussions about a code of CG practices began after a Commonwealth conference on CG which was held in Kampala, Uganda, in late 1998. Uganda is Kenya's neighbour to the west. Interviewee accounts showed that representatives from the three bodies – ICPAK, CMA, NSE – and various Kenyan corporate executives attended the conference. This suggests that local players were also keen to have a code of CG practices. Kenya is one of the few countries in Africa where demand for CG code emanated from the private sector (Aguilera and Cuervo-Cazurra, 2009). After the Kampala conference, these players – ICPAK, CMA, NSE, and other individuals – organised a CG workshop in Nairobi, Kenya, subsequently attracting the attention of the donor community. Interview accounts suggested that the donors including the IFC, DFID, IMF and World Bank found the local players' private establishment more cooperative to work with, as opposed to the government which had adopted a hostile attitude towards various economic reforms proposed by the Bretton Woods institutions. Other donors who financed the activities of this private initiative include the Ford and, Friedrich Ebert foundations. Archival data shows that the government was reneging on a number of reforms terming them as politically unpopular amongst the public, and hence a big risk to take at the advent of multiparty politics (Mwaura, 2007, Were et al., 2006). Kenya had previously been a one-party state and had allowed multiparty system upon recommendation by the Bretton Woods institutions.

With financial assistance availed, the local players' private initiative continued to organise CG workshops in Kenya's major cities. The group was also formally registered as a trust –

the Private Sector Corporate Governance Trust (PSCGT). The donors continued to finance the activities of the trust including the costs of organising its workshops, salaries for its staff, and paying rent for its offices. The donors would also cover the costs of various speakers – mainly drawn from the UK – who were invited to give talks during the PSCGT’s various workshops (Gatamah, 2002b). In 1999, the PSCGT formed a committee to draft a code of CG practices drawing inspiration from ideas exchanged during its various workshops. However, the PSCGT CG code could not be enforced by the CMA as it was a private initiative (Private Sector Initiative for Corporate Governance, 1999).

Notwithstanding, interviewee accounts indicated that the CMA was inspired by the development of the PSCGT code, leading to the formation of a technical committee to review the PSCGT code along with other CG codes elsewhere in the world including the UK, South Africa, Malaysia, as well as the OECD and Commonwealth CG code and principles respectively. Indeed, the CMA’s technical committee acknowledged in the subsequent official Kenyan CG code that, the PSCGT code was instrumental in drafting the former (see Capital Markets Authority of Kenya, 2002, p. 472). Eventually, the official Kenyan CG code became effective in January 2002, after its passing by parliament and subsequent publication in the official Kenya gazette – Gazette Notice No. 3362 of 2002.

Reading and analysing archival evidence showed that the UK’s combined code of 2000 was used as a reference point whilst developing both the PSCGT and the official Kenyan CG codes, respectively. Besides, the international speakers invited during the various CG workshops organised by the PSCGT also originated from the UK. Hence, this study conducted a comparative analysis between the Kenyan CG code and the UK’s combined code of 2000. The analysis showed striking similarities between Kenyan CG code and the UK’ combined code of 2000. These include the structure of boards, board appointments and remuneration, and emphasis on shareholder wealth maximisation as the objective of firms. The two codes also recommend a unitary board system, with separation of CEO and chair

roles, and also follow a comply-or-explain approach. Furthermore, the analysis also showed resemblances of verbatim across various provisions of the Kenyan and UK combined code of 2000, a finding that was also corroborated with interview data. The conclusion drawn from this analysis finds that Kenya's CG is extensively borrowed from the UK CG code, and is also significantly modelled along the Anglo-American governance system. Besides, no evidence was found in the Kenyan CG code to suggest that its drafters took the country's institutional reality into account, including: (a) depth of capital market, (b) sophistication of investor behaviour, (c) ownership patterns, and (d) legal environment. In this regard, this thesis puts to question the applicability of Kenya's CG code within the constraints of the institutional environment. The findings further suggest that the implementation of the code's provisions is likely to encounter difficulties because of conflicts with local institutional factors. This is considering that Kenya's institutional environment is different from those of countries where the Anglo-American CG code originates, and also institutions are complex, and evolve in time and space. Indeed, "foreign systems of CG [are argued to] reflect their history, assumptions, and value systems" (Charkham, 1994, cited in Adegbite and Nakajima, 2012, p.84). With this understanding, I pre-suppose a mismatch between Kenya's Anglo-American-inspired CG code and the prevailing institutional environment of Kenya, within which the code was intended for practice. The second sub-question examined this proposition in detail and arrived at the conclusions discussed below.

### **6.2.2 What factors influence the implementation of Kenyan CG code within the corporate sector?**

This section discusses the main findings pertaining to the second sub-question. A comprehensive analysis of the evidence relating to this research question is also provided in chapter 5 of this study. The analysis for this second sub-question extends from the findings drawn from the discussion regarding the evolution of Kenya's CG code; as explained whilst answering the first sub-question (see subsection 6.2.1 above). Accordingly, the answers to



the second sub-question explain how the implementation of Kenya's CG code is influenced, from the viewpoints of the five CG pillars, by the reality of Kenya's institutional background.

With regard to the first CG pillar – the legal and regulatory framework – it was established that Kenya's corporate sector is governed by a complex regulatory web. This creates a regulatory burden, as well as confusion for firms, as some regulatory agencies update their regulations whilst others do not thereby leading to conflicting regulations. Listed firms with dominant government ownership are found to bear the greatest regulatory burden, which was also confirmed by interview data to be a source of political interference in the operations of those firms. Another major weakness within this pillar is the inefficiencies which hamper the capability of the various regulatory bodies in supporting an effective CG environment. These inefficiencies comprise resource constraints including shortage of funds and skilled personnel, political interference in the operations of the regulatory bodies, and corruption and bribery.

Ownership patterns and shareholders rights was the second CG pillar examined. The ownership of Kenyan firms was found to exhibit a concentrated shareholding pattern (Shleifer and Vishny, 1997, Claessens and Yurtoglu, 2013, Wang and Shailer, 2013). The ownership of the various listed firms was found to be under the control of one or more of the following: foreign or local institutional investors, family ownership, and the government. The evidence also showed that government controlled firms are more prone to poor management, corruption and bribery, and political interference. On the other hand, CG concerns within family-controlled firms include weak board independence, poor disclosure and mistreatment of minority shareholders. Moreover, shareholder participation in AGMs was found to be minimal. As found in the analysis, a big number of minority shareholders do not take part in AGM proceedings in spite of registering their attendance, suggesting that AGMs resolutions of some firms may have been adopted without the necessary quorum. The

analysis of ownership structure also reveals an interesting finding about the nature of principal-principal conflicts within Kenya, often impacting on minority shareholders rights. Minority shareholders rights are undermined through two ways, (a) directly: where majority shareholders engage in misappropriation of firm resources, and/or ambiguous business dealings with their firms; and (b) indirectly: as a result of boardroom conflicts amongst large shareholders often leading to losses for the minority shareholders.

Thirdly, and pertaining to the role of boards of directors within Kenyan firms – the third CG pillar – it was found that board functions are heavily influenced by the underlying reality of Kenya's contextual background. For instance, the findings established that board diversity is widely considered to be gender and tribal/regional representation, in a country which has had a long history of female underrepresentation within the formal sector, along with highly tribal/ethicised society. Accordingly, gender and ethnic/regional diversity is considered more important over the diversity of skills of the individual board nominees. Also, directors and managers were found to influence the appointment process of directors; hence, relegating the nomination committees as rubber stamps for preferences – usually friends – of the former. Another notable finding is a tendency for family controlled firms to have directors with advanced ages because their founders, usually the family patriarchs and other relatives, serve in those boards. Also, the analysis showed high incidences of boardroom conflicts which often lead to factions within boards subsequently affecting board processes. The board infights usually emanate from competition over board leadership, or acrimony between the directors. Another interesting finding concerning boards of directors is the unusually high frequency of board meetings both within and across industries. For instance, the analysis shows that the number of board meetings held within the banking industry in 2012 ranges from 4 to 40. It is debatable whether the abnormally high number of board meetings may have been a strategy for directors to earn high emoluments, or was necessitated by difficult business environment.

Fourthly, stakeholders – the fourth CG pillar – are found in this study to have considerable impact in the Kenyan CG process as either: facilitators, or impediments (Freeman, 2010). In this regard, the analysis sought to understand how other stakeholders of Kenyan firms, apart from the board of directors and managers, and shareholders, influence the implementation of the CG code. This is an area that has been neglected within CG studies researching Anglo-American CG contexts, save for corporate social responsibility studies whose focus has moved beyond boards of directors/executives and shareholders. In this study, we found that stakeholders operating within the formal realm of various firms perform instrumental roles in CG implementation. For instance, company secretaries were found to be critical pillars within boardrooms as they perform key functions such as drafting and signing/stamping the resolutions of board meetings, certifying director resignations, and ensuring that board processes are carried out within the CG code's requirements. Accountants and auditors were also found to be central pillars underpinning disclosure and transparency of firm affairs, hence reducing information asymmetries and subsequently boosting CG. Consistent with literature, the findings also showed that multinational firms operating in Kenya have an influence on domestic firms CG practices, suggesting that the former serve as diffusion agents of international CG practices within Kenya. Conversely, the findings show some stakeholders – such as the nature of customer, and some local communities – hamper the effective implementation of the CG code. For instance, firms which trade with the government are perceived as highly likely to engage in corruption and other questionable practices, in order to win business deals. Besides, firms domiciled in deprived areas face greater disruptive threats from the local communities that sometimes demand a share of firm resources, or voice in decision making. These actions present CG dilemma for firms concerning whether to rigorously implement the CG code's provisions, or to safeguard their social legitimacy by yielding to, often unduly, community demands.

Finally, the transparency of the Kenyan CG process – fifth CG pillar – was analysed and the findings showed various constraints which influence disclosure of firm affairs, consequently hampering CG transparency. In connection with this, the findings indicate that misrepresentation of financial statements is a common problem in Kenya. This may take various forms including: (a) exaggeration of firm revenues, (b) misrepresentation of assets, or (c) understating losses. Such activities take long before they are discovered as auditors tend to be complicit in cover up together with management, hence posing a significant problem to CG transparency. This was corroborated both by interview and archival data which revealed increasing cases of financial misconduct within various firms. The findings point to rampant corruption and non-adherence to professional code of conduct on part of the auditors and accountants working within various firms, as the major hindrances to financial accountability.

### **6.3 Implications of Findings**

The findings of this study have a number of implications including contribution to literature, along with policy recommendations.

#### **6.3.1 Theoretical contributions**

The thesis draws on agency theory, stakeholder theory and new institutional sociological perspective. It then critically develops a theoretical framework for uncovering the existence and sources of incompatibility of the Anglo-American CG model in an LDC context, with empirical evidence from Kenya. The framework depicts the connection between Kenya's CG code and the underlying institutional environment, which forms the basis upon which CG is practiced. The framework suggests that it is important to consider factors which influenced the development of a CG code and those which impact its implementation. These insights are necessary in uncovering sources of incompatibility of a foreign-originated CG code, including whether such factors emanate from the emergence process of the CG code.

Accordingly, a major finding from this study suggests that agency theory whose assumptions underpin the Anglo-American CG model, adopted in Kenya, is unable to fully explain the CG reality of Kenya. For instance, evidence shows that Kenyan firms have heavily concentrated shareholding structures. While literature suggests that large shareholders are associated with increased monitoring (e.g. Shleifer and Vishny, 1997, Jensen and Meckling, 1976), Kenyan firms with more than one dominant shareholder were found to be at risk of boardroom wars; thus, affecting the practice of CG. This finding opens an interesting angle concerning the nature of CG problems encountered by Kenyan firms. It suggests that CG problems in Kenya's corporate sector do not only emanate from conflicts between executives and shareholders as stipulated within agency theory (Jensen and Meckling, 1976, Fama, 1980, Fama and Jensen, 1983), but also amongst the shareholders themselves. Also, minority shareholders are found to exhibit considerable apathy in their attendance at AGMs, while many others lack adequate financial literacy needed to buttress the CG process. In connection with this, the research concludes that there is a need to develop a new theory of CG which would be able to explain such uniqueness of CG reality within LDCs, and which may not have been previously envisaged by previous theorists who originate from non-LDCs contexts (e.g. see Jensen and Meckling, 1976, Fama and Jensen, 1983, Freeman and Reed, 1983). The new theory may be developed out of present CG theories; where, as an instance, the assumptions of agency theory could be expanded to incorporate the CG practices observed within LDCs contexts including principal-principal conflicts. Alternatively, a new theory for explaining CG within LDCs could be developed by carrying out more in-depth studies in various countries, and then comparing the findings to establish patterns which can explain CG reality. However, the latter approach might be expensive and time consuming, as extra resources and time would be required to conduct studies in multiple countries.

The findings from this study also show that the practice of CG within Kenya is heavily influenced by the institutional environment. In this regard, the institutional environment

constrains the effectiveness of the CG pillars identified in this study, consequently hindering the applicability of the CG code's provisions. Therefore, this suggests that the success of the code of CG practices implemented in Kenya, is dependent upon some level of compatibility between the code's requirements and the underlying institutional environment. This argument is supported by the theoretical framework developed and presented in section 2.4 of this study.

In addition, the answering of this thesis's research questions has an implication for CG scholarship. For instance, while investigating the factors and events which led to the development of Kenya's CG code, this study found that there was an active local initiative originating from Kenya's corporate sector. However, despite the involvement of locals in the drafting of CG including its adoption, the findings from this thesis have raised questions concerning the effectiveness of the CG code practiced in Kenya. The findings show that Kenya's institutional environment has possibly grown even more complex, on account of its mix between powerful traditional customs and acquired/modern cultures. This means that the actions of CG actors, including the meanings they attach to the process of CG, are influenced by multiple, and potentially conflicting viewpoints as informed by Kenya's complex institutional environment. Finally, this poses an additional problem in that no existing CG theory is able to explain this phenomenon of CG, existing in Kenya. This is considering that in addition to Kenya's thriving traditional cultures, the country has embraced both western and oriental business practices owing to longstanding relationships with countries from the two contexts. This has considerable implications for future CG theories developed to explain the nature of CG within LDCs contexts like Kenya. Such theories should be versatile enough to explain CG phenomena within the potentially idiosyncratic contexts in various LDCs. To achieve this, researchers may benefit from utilising an interpretivist epistemological stance which would permit them to focus their theory building studies on peculiarities of each LDC country setting, in order to examine

each country's institutional environment in depth, as well as the manner in which it influences CG practices (Saunders et al., 2009, p.115-120).

### **6.3.2 Policy contributions**

The findings from this study have a number of policy implications.

Firstly, evidence from this study has demonstrated the existence of multiple regulatory bodies whose mandates overlap in some areas, and also contradict in other respects. This finding has also been found to be a constraint to the effective implementation of the Kenyan CG code. Accordingly, the government should develop a coherent and non-overlapping regulatory system. This may be achieved through minimising the number of regulators, to one or few regulators, overseeing operations within the corporate sector in order to lessen the regulatory burden on firms. This has potential to improve compliance with the corporate sector regulations as it would reduce ambiguity, and possibly also firms would stop viewing the regulatory framework as an encumbrance and embrace it (Arjoon, 2006, Adegbite and Nakajima, 2012, Adegbite et al., 2013).

Secondly, further evidence has shown that various regulatory bodies face a number of constraints including mainly the lack of skilled personnel, and inadequate resources such as funding and technology. Notwithstanding, these regulatory bodies form an important pillar which underpins the process of CG within Kenya. It is therefore important for the government to ensure that such supervisory bodies have adequate resources to oversee the operations within the corporate sector. For instance, this study established that the filing system at the companies' registry is carried out manually, making it nearly impossible to ensure firms' compliance with basic provisions of the companies act such as annual filing of financial statements, and tracing the backgrounds of individuals serving in company boards. This problem may be eliminated by computerising the companies' registry. It would also eliminate incidences of corruption where some staff ask for bribes in order to search for files requested by members of the public. Similarly, the appointment of the leadership of the

regulatory bodies, such as the board of directors of CMA, was found to spread political interference into the operations of the corporate sector. This is because the appointing authority, usually the minister for finance, may tend to appoint cronies into such positions, and then the boards end up hiring their followers based on friendship; hence, hampering meritocracy. Accordingly, the government should put in place proper structures to ensure that strict criteria focussing on merit is followed in hiring individuals serving in the regulatory bodies, and also provide them with competitive remuneration to limit the high turnover of skilled staff working in those bodies.

Thirdly, the findings from this study have identified the existence of outdated laws which pose insignificant fines and penalties for contravening the provisions of corporate statutes in Kenya. Accordingly, policy makers must enforce more severe penalties in form of stiff fines and/or jail terms depending on the seriousness of offences committed by the defaulters. This would subsequently prevent disregard of laid down corporate sector laws, which underpin the implementation of the CG code.

Fourthly, the findings from this study suggests that vast numbers of minority shareholders in Kenya have limited financial literacy which hampers their participation in the CG process, including contribution in firm decision making. This problem is further exacerbated by the lack of common voice amongst the minority shareholders, due to the absence of an umbrella body to articulate and safeguard their interests and welfare respectively. This therefore leaves the minority shareholders severely disadvantaged (Adegbite, 2015), within the Kenyan CG landscape. Accordingly, there is an urgent need for policy makers to facilitate the establishment of a shareholder's association which will ensure the minority shareholders rights are protected and they are actively engaged within the CG process.

Finally, the findings of this study suggest that corruption and bribery, along with lack of integrity amongst various professionals such as accountants and auditors poses a huge threat not only to the CG process, but also the wider Kenyan economy. Therefore, the government



must institute ways of eradicating these problems. One measure which the government could take includes reforming the anti-corruption commission and availing it powers to prosecute corrupt individuals, rather than taking them to courts of law where cases drag for long time; with case files sometimes disappearing often leading to mistrials. Also, reforms may be necessary to help in eliminating corrupt officers with the judicial process in Kenya. The other measure which the government could use is to redesign the educational curriculum to include courses on integrity and dangers of corruption at all levels of the education system.

#### **6.4 Limitations of the Research**

Some limitations were encountered during the conduct of this research, whilst others potentially limit the interpretation of the findings reached.

To begin with, the registrar of companies is a key CG player within the Kenyan corporate sector. The researcher was however unable to secure an interview appointment with a representative from the registrar's office during the research fieldwork, despite making four visits to the companies' registry and getting promises from the registrar general, and the registrar of companies that an interview would be arranged. There is thus a possibility of missing data about, say, whether the registrar of companies may have undertaken investigations against a company that may have violated shareholders rights or failed to submit audited financial statements. Such information would be crucial in understanding the transparency of Kenya's CG process, as well as extent to which the companies' registry facilitates the practice of Kenya's CG code (Adegbite, 2012). Notwithstanding, the study has attempted to overcome this limitation by seeking answers to questions that pertains to the companies' registry, from other sources such as experiences of individuals who deal with or have dealt with the registry, along with archival data.

Secondly, the evidence collected from this study showed that the social context of Kenya has significant influence on the practice of CG within the corporate sector. It is possible that some of the findings may have various interpretations based on different theories.

Anthropological theories, for instance, may have different inferences concerning the social background of Kenya. Accordingly, the findings reached have been interpreted within the limits of the three theories adopted in this study, that is, agency theory, stakeholder theory and new institutional theory.

Thirdly, the findings from this study may not be generalisable to other countries despite one of its aims being to expand the limited literature on CG within LDCs. However, this limitation is common for in-depth qualitative studies such as this one (Easterby-Smith et al., 2008, Saunders et al., 2012), and hence not unique to this research alone. However, the study provides interesting findings which CG scholars in other LDCs may find to be useful points of departure in identifying areas which may require further research within their chosen countries of study. Such writers may also find this study's findings useful for comparing with their own results to establish whether there may be consistency of CG phenomena observed.

Fourthly, this study has utilised newspaper reports as part of the archival evidence analysed to answer the research questions. This is not unique to this study alone as other similar studies (*see* Osemeke and Adegbite, 2014, Siddiqui, 2010) have also relied on newspaper reports to supplement the shortage of data. Critics may however argue that newspaper reports lack rigorous analysis of the various issues discussed. To compensate for this potential limitation, the researcher only selected reports and news stories from leading media companies with international, or at least national outreach. Such reports did not constitute the main data set for this thesis, but instead were only complementary.

Finally, the findings from this study have raised serious concerns about the applicability of the current Kenyan CG code. Notwithstanding, the researcher could not affirmatively establish whether the performance of the Kenyan corporate sectors has improved after the adoption of the CG code. This is because establishing that would require the study to measure firm performance during the periods prior to and after the adoption of the CG code, which

was beyond the scope of this research. However, this consideration has been suggested as a possible avenue for future research in the section below.

## **6.5 Avenues for Future Research**

There is certainly scope for more research on CG in Kenya, and potentially other similar LDCs, regarding some of the issues noted during the course of this study.

Firstly, the evidence utilised in this study showed that some companies held as many as ten times more board meetings in one year, compared to other companies within the same industry. This is a peculiar discovery in this study, and provides a possible research avenue for investigating whether such frequent board meetings are indeed beneficial for maximising shareholder wealth. Whilst frequent board meetings may signify increased board monitoring activity, in theory; they may also result in substantial agency costs in form of directors sitting allowances hence being counterproductive. Future researchers may analyse the relationship between the frequency of board meetings and firm performance. They may also find the theoretical framework developed in this thesis useful for guiding their investigation to understand the extent of influence of the institutional environment on perceptions of directors and their consequent actions.

Secondly, observation of various firms' AGMs showed that a big number of minority shareholders fail to contribute to AGMs discussions, whilst others who participate often discuss trivial issues. Future research may therefore examine the relationship between shareholders engagement during AGMs and shareholder returns. One possible way of doing this may be to conduct review of AGM minutes to determine whether the issues raised by shareholders are relevant to the AGM agenda, or whether they pertain petty issues such as food or gifts. The other approach may be to compare the number of shareholders who register for the AGM and, compare that with a tally of shareholders who sit during the duration of the AGM.

Thirdly, the findings from this study have shown that various constraints within Kenya's institutional environment have hampered the effective implementation of the Kenyan CG code; subsequently, rendering it potentially ineffective. In connection with this, there is scope for future research to examine the extent to which the current CG code has improved the performance of the Kenyan corporate sector. Authors can approach such research by comparing the returns, or other performance criteria, of firms during the periods preceding and after the adoption of CG. Such understanding would be useful in understanding whether the Kenyan CG code has, indeed, had a positive impact within the Kenyan corporate sector or needs review.

Fourthly, interviewees showed varied perceptions regarding the role of women in the Kenyan CG landscape. In connection with this, some interviewees opined that some boards are beginning to nominate women into their boards on account of the requirements of the new Kenyan constitution. Such a requirement may be aimed at achieving economic objective (i.e. boosting firm CG practices) and non-economic objective (i.e. social inclusion). Accordingly, a possible future study may examine whether gender representation on boards of Kenyan companies, particularly the presence of female directors, has an impact on firm performance. In addition, the findings have shown that some companies perceive diversity as meeting gender representation and regional/ethnic balance, and often overlooking skills diversity. Therefore, it would be interesting to investigate both the impact of women on boards and tribal composition of boards, to determine whether such diversity brings other benefits besides demographic representation.

Finally, the analysis concerning the ownership patterns of Kenyan firms showed that the nature of controlling shareholder(s), i.e. whether family or government controlled, or institutional investors; tend to have different implications on the quality of CG practices within respective firms. This therefore opens a potential research avenue to investigate whether the same finding holds in other countries. In order to offer meaningful contribution

to literature, authors of such study may consider replicating the approach in this study in other LDC settings or utilising a cross-country analysis of more than one LDC. Researchers may also examine whether the type of dominant owner(s) vis-a-vis observed firm CG practices has corresponding consistency in the different countries.

## **6.6 Chapter summary**

This chapter concludes this PhD thesis. It provides a summary of the other chapters, that is, chapter one to chapter five. It also highlights the main findings reached in this thesis and, whilst doing so, has shown that those findings address the research questions developed at the beginning of this study upon reviewing extant literature. Accordingly, the discussion of findings is divided into two sections where the first section provides an explanation regarding how the findings reached in this study answer the first sub-question. The second section then provides answers to the second sub-question. Overall, the answers to those two questions help to understand how Kenya's CG code is practiced within the constraints of her institutional environment. Subsequently, this understanding helps to achieve the objective of assessing applicability of Anglo-American based model of corporate governance in Kenya – a non-traditional context. Notwithstanding, the findings from this study suggest that several weaknesses exist within Kenya's institutional environment including: inefficient judiciary and regulatory bodies, outdated corporate statutes, rampant corruption, tribalism, concentrated ownership structures, and powerful traditions and culture and poverty. Such factors were found to be potential sources of incompatibility between an Anglo-American-fashioned CG code and Kenya's institutional environment. Moreover, this chapter explains the implications of this study's findings for theory and practice. It also discusses the limitations of the research, and provides directions for future research.

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## Appendices

### Appendix ‘A’ – Table of Statutes

South Africa. *Employment Equity Act 1998: Presidency. Act no.55* (1998). Cape Town: Government Gazette.

Kenya. *The Capital Markets Act 2002: Presidency. Gazette Notice No. 3362. Chapter 485A* (2002). Nairobi: The Capital Markets Authority.

South Africa. *Broad-Based Black Economic Empowerment Act 2003: Presidency. Act no.53* (2003). Cape Town: Government Gazette.

Kenya. *The Accountants Act 20008: Presidency. Laws of Kenya, Chapter 531* (2008). Nairobi: National Council for Law Reporting.

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## **Appendix ‘B’ – Interview Guide**

### **Questions to representatives of listed companies**

#### **1. Institutional and regulatory framework**

- i. How would you rate the commitment from companies to strengthen corporate governance within the Kenyan corporate sector?
- ii. Was there involvement of the public (corporations and shareholders) through consultations when developing the current corporate governance codes as well as any subsequent reviews?
- iii. Have you had instances where some corporate governance regulations contradict with other legal requirements in the country?
- iv. In your view, what are some of the weaknesses or weak areas in the current regulatory requirements?
- v. How good is the coordination between the various supervisory bodies charged with overseeing CG implementation (i.e. Capital Markets Authority, Institute of Certified Public Accountants of Kenya, and Registrar of Companies)?
- vi. What are your main concerns regarding the manner in which corporate governance is designed?

#### **2. Ownership Structures and Shareholder Rights**

- i. What are some of the corporate governance problems that have had direct consequences on the welfare of shareholders?
- ii. How have shareholders made use of available options in seeking redress for their grievances?
- iii. In your opinion, are AGMs well attended? What do you think about the level of shareholder participation at AGMs?
- iv. How is the voting process conducted during AGMs:
  - Is the voting done with a formal poll or is it by “show of hands”?

- How are voting results communicated?
  - What happens to the votes of shareholders not present at the AGM?
- v. Do you think shareholders understand their rights and recourse under the corporate governance codes?
  - vi. In practice, is the board or management able to carry out extraordinary transactions without the approval of shareholders?
  - vii. How easy is it to convene an extraordinary meeting of shareholders as and when a need arises?

### **3. Boards of Directors**

- i. In your opinion, what are the board committees that help in promoting good corporate governance within your organisation?
- ii. How would you define an effective board of directors?
- iii. What are some of the steps taken by the board to supervise and support the management?
- iv. What criterion is used in recruiting new board members? Are the new directors trained for their new roles?
- v. In your opinion, what particular features of the board structure have the greatest effect on corporate governance?
- vi. Do boards and individual members have access to professional advice at the expense of the corporation in regard to company matters?
- vii. How often does the board meet?
- viii. What type of board trainings are normally offered to board members?
- ix. What factors would you consider as most important regarding the composition of board as well as the board committees?

#### **4. Role of Stakeholders in CG**

- i. How would you describe your company's relations with other non-shareholding stakeholders, such as employees, trade unions, creditors, customers, suppliers, and local community?
- ii. In your view, how do those stakeholders impact on the way you implement corporate governance regulations?
- iii. Do you feel pressurized by stakeholders to engage in corporate social responsibility?
- iv. What are some of the reactions that you have received from shareholders concerning your involvement with the stakeholders?
- v. What levels of access to corporate information do stakeholders have?
  - Do you have reporting mechanisms, voluntary or otherwise, for communicating with such stakeholders?

#### **5. Financial Transparency and Disclosure**

- i. How frequently are you supposed to file both your financial and non-financial information with the relevant authorities?
- ii. How do you disseminate such information (i.e. electronically or manually) to both the shareholders and other stakeholders particularly the regulatory authorities?
- iii. What do you consider to be the purpose of the board report (i.e. chairman's review, and directors' report) in the annual report?
- iv. How would you compare the costs of compliance with corporate governance reporting (i.e. costs of preparing documents, audit fee, and costs of publishing in the mass media) with the company's earnings?
- v. In your professional opinion, do related party transactions take place under transparent condition, and are they sufficiently disclosed in practice?
- vi. How would you rate the quality of audit work performed by external auditing companies?



### **Questions to officials of supervisory bodies**

- i. What do you consider to have been the main influences on the development of CG in Kenya?
- ii. Are the current CG regulations operating in Kenya meeting their intended objectives?
- iii. How do you monitor CG implementation by listed firms (i.e. on-site inspection and sampling)?
- iv. What sanctions do you employ in the event of non-compliance with corporate governance by the listed companies?
- v. In your opinion, have those sanctions been effective in deterring poor corporate governance practices?
- vi. Does your organisation have to consult any other government department before you can take action, for instance, when companies violate corporate governance regulations?
- vii. What are some of the challenges that your organisation faces while performing its supervisory roles?

## Appendix 'C' – HREC Approval



From Dr Duncan Banks  
Chair, The Open University Human Research Ethics Committee  
Email [duncan.banks@open.ac.uk](mailto:duncan.banks@open.ac.uk)  
Extension 59198

To Danson Kimani, Department of Accounting and Finance,  
Faculty of Business and Law

Subject *"Investigation of contextual influences on development of  
corporate governance practices in the Kenyan corporate  
sector."*

Ref HREC/2014/1707/Kimani/1  
AMS ref n/a  
SRPP/IRAS n/a  
Submitted 15 June 2014  
Date 18 June 2014

### Memorandum

This memorandum is to confirm that the research protocol for the above-named research project, as submitted for ethics review, has been given a **favourable opinion** by the Open University Human Research Ethics Committee. Please note that the OU research ethics review procedures are fully compliant with the majority of grant awarding bodies and their Frameworks for Research Ethics.

Please make sure that any question(s) relating to your application and approval are sent to [Research-REC-Review@open.ac.uk](mailto:Research-REC-Review@open.ac.uk) quoting the HREC reference number above. We will endeavour to respond as quickly as possible so that your research is not delayed in any way.

At the conclusion of your project, by the date that you stated in your application, the Committee would like to receive a summary report on the progress of this project, any ethical issues that have arisen and how they have been dealt with.

Regards,

Dr Duncan Banks  
Chair OU HREC

## Appendix 'D' – Participant Research Project Information and Consent Form



**The Open University**

**Business School**

Walton Hall

Milton Keynes

United Kingdom

### Research Project Information and Consent Form

#### **Project Title**

Corporate Governance in Africa

#### **Name of the Researcher**

Danson Kimani – PhD Student, Department of Accounting and Finance, The Open University  
Business School

#### **Purpose of the Research**

This research project is being undertaken as part of my PhD thesis, and is thus for academic purposes only. The main objective is to elicit rich and deeper insights from participants regarding their views and experiences in implementing the corporate governance code in use within the Kenyan corporate sector. Such research data will be collected using semi-structured interviews along with field observation notes.

#### **Duration of the Interview**

The duration of each interview is expected to last approximately 60 minutes.

#### **Benefits to the Participants**



Whilst there are no immediate benefits for the participants, it is anticipated that this PhD study will contribute to and encourage high quality research in the field of corporate governance particularly within emerging economies. The research fieldwork further offers a meaningful platform for stakeholders to share their views on how corporate governance may be further improved in Kenya, potentially stimulating debate across wide-ranging practitioners, academics and policy makers. Not least, a summarised copy of the research report shall be provided to the participants on completion of the final report.

### **Risks to the Participants**

The research field work involves minimal levels of risk, and the participants will not encounter any risks that might exceed those risks that they encounter in their day-to-day activities. However, the researcher shall take due care to protect participants from all types of psychological distress or any physical risks.

### **Confidentiality and Data Protection**

The researcher will take every possible precaution to uphold the confidentiality of the research participants' identities and data. The data collected from the participants will be used solely for research purposes and with their permission. If any participant does not agree to the use of any piece of the information provided by him/her, such data will not be used in this research project. The interviews will be tape recorded and, transcribed by the researcher afterwards. The researcher will also take all possible measures to protect the data collected from any unauthorised access, accidental disclosure, loss or destruction. The researcher shall keep the data under password protected storage. The audio data will be stored on the more secure Open University's servers where it will be accessible to the researcher only. The data shall not be kept by the researcher longer than required, and will be destroyed once the research project has been completed and the PhD thesis has been submitted to the research school. For the benefit of participants, no personal information is required at any stage of this research and thus, the names of the participants and their organisations shall be kept confidential and will be coded. Instead, pseudonyms such as respondent 1 or participant 1 etc. shall be used to denote the individuals who participate in the research. For purposes of this research, the researcher shall dutifully adhere to the provisions contained in the Data Protection and Freedom of Information Act (UK), The Open University Code of Practice for Research and Those Conducting Research, the Ethics Principles for Research involving Human

Participants, and the Economic and Social Research Council's Framework for Research Ethics. Therefore, data protection and confidentiality shall be maintained strictly in accordance with the guidelines detailed herewith. The results of the data shall be disseminated in the form of dissertation report and, possibly as an article for presentation at an academic conference or for publication in an academic journal.

### **Costs and Compensation**

This research project is fully-funded by The Open University (United Kingdom), and is to be undertaken only for the purpose of completing a research doctorate degree (PhD) and possibly writing a research article. The research participants therefore, shall not bear any costs during the research process. The researcher shall approach each participant at his/her place of work.

### **Voluntary Nature of Participation**

Participation in the research process is voluntary and a participant has every right to refuse participation. Even after agreeing to participate, the respondent still retains the right to withdraw participation before all the research data is analysed and final results have been concluded.

### **Contact Details**

In case of any queries regarding this research project, please feel free to contact me or any of my research supervisors at The Open University.

**Danson Kimani (Researcher)**

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**Dr Howard Viney (Supervisor)**

Tel: +44 (0) 1908 654599

E-mail: [Howard.Viney@open.ac.uk](mailto:Howard.Viney@open.ac.uk)

## Participation Agreement

I \_\_\_\_\_ have had the opportunity to read this **information and consent form**, ask questions where necessary and agreed to participate in this research project.

I have been informed about the purpose, duration, risks, and benefits of the project. I have also been assured about the confidentiality of the information, and that research data will be confidential to the extent allowed by law, and thus shall remain secure and only used for academic purposes including writing an academic research paper. I have also been informed that I have the right to withdraw from participation before all the research data has been analysed and final results are concluded.

I understand that if I have any questions or concerns about this project, I can contact the researcher and/or his academic supervisors as listed above.

\_\_\_\_\_

**Participant's Signature**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Researcher's Signature**

\_\_\_\_\_

**Date**